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Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the United Nations

Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the United Nations

Report of the Secretary-General

Summary

The present report was mandated by General Assembly resolution 58/104 and contains a list of specialized agencies and international institutions associated with the United Nations to which the provisions of the resolution apply and to whose attention the Secretary-General drew the text of the resolution.

* A/59/50/Corr.1.

04-26388 (E) 010404

1. At its fifty-eighth session, the General Assembly adopted resolution 58/104 of 9 December 2003 concerning the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the United Nations. In paragraph 16 of that resolution, the Assembly requested the Secretary-General to continue to assist the specialized agencies and other organizations of the United Nations system in working out appropriate measures for implementing the relevant resolutions of the United Nations and to prepare for submission to the relevant bodies, with the assistance of those agencies and organizations, a report on the action taken in implementation of the relevant resolutions, including resolution 58/104, since the circulation of his previous report.

2. In a letter dated 6 February 2004, the Secretary-General brought the text of the resolution to the attention of the executive heads of the following specialized agencies and other international organizations and invited them to submit the information requested for inclusion in the report referred to in the above paragraph:

International Labour Organization

Food and Agriculture Organization of the United Nations

United Nations Educational, Scientific and Cultural Organization

International Civil Aviation Organization

World Health Organization

World Bank

International Monetary Fund

Universal Postal Union

International Telecommunication Union

World Meteorological Organization

International Maritime Organization

World Intellectual Property Organization

International Fund for Agricultural Development

United Nations Industrial Development Organization

* * *

Office of the High Commissioner for Human Rights/Centre for Human Rights

United Nations Office on Drugs and Crime

Economic Commission for Latin America and the Caribbean

Economic and Social Commission for Asia and the Pacific

United Nations Conference on Trade and Development

United Nations Development Programme

United Nations Environment Programme

Office of the United Nations High Commissioner for Refugees

United Nations Children's Fund

World Food Programme

United Nations Institute for Training and Research

International Atomic Energy Agency

World Tourism Organization

World Trade Organization

* * *

African Union

Caribbean Community

Caribbean Development Bank

League of Arab States

Organization of American States

Organization of Eastern Caribbean States

Pacific Islands Forum

* * *

3. Summaries of the replies received from the international organizations concerned in response to the above-mentioned letter will be given in document E/2004/47.

4. Summaries of additional replies received, together with such further information as may become available on relevant activities undertaken by the organizations concerned during the year, will be circulated in addenda to the report mentioned in paragraph 3.

5. In addition, the Secretary-General drew the text of the resolution to the attention of various departments and other units of the Secretariat. Information received in that regard will also be included in the above-mentioned report.

United Nations A/59/65–E/2004/48

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Economic and Social Council

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General Assembly
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Joint Inspection Unit

Economic and Social Council
Substantive session of 2004
Item 14 (g) of the provisional agenda**
Social and human rights questions: human rights

Report of the Joint Inspection Unit on the management review of the Office of the United Nations High Commissioner for Human Rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Joint Inspection Unit entitled "Management review of the Office of the United Nations High Commissioner for Human Rights" (JIU/REP/2003/6).

* A/59/50 and Corr.1.
** E/2004/100.

04-26887 (E) 190304

JIU/REP/2003/6

Management review of the Office of the United Nations High Commissioner for Human Rights

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Joint Inspection Unit

Geneva
2003

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ACRONYMS

ACABQ	Advisory Committee on Administrative and Budgetary Questions
APB	Activities and Programmes Branch (OHCHR)
EE	Eastern Europe
ICT	Information and communications technology
IMIS	Integrated Management Information System
JIU	Joint Inspection Unit
LA + C	Latin American and Caribbean States
NCE	National Competitive Examination
NGOs	Non-governmental organizations
OHCHR	Office of the High Commissioner for Human Rights
OHRM	Office of Human Resources Management
OIOS	Office of Internal Oversight Services
RRDB	Research and Right to Development Branch (OHCHR)
SSB	Support Services Branch (OHCHR)
UNOG	United Nations Office at Geneva
UNOPS	United Nations Office for Project Services
WEO	Western Europe and Other States

EXECUTIVE SUMMARY: OBJECTIVE, CONCLUSIONS AND RECOMMENDATIONS

Objective:

To review the management and administration of the Office of the United Nations High Commissioner for Human Rights (the Office) as requested by the Commission on Human Rights (the Commission), with particular emphasis on recruitment policies and the composition of the staff of the Office, with a view to recommending improvements.

INTRODUCTION (chapter I)

A. Since 1997 the Office has been subjected to numerous audits, oversight reviews and evaluation studies, which have resulted in a considerable number of recommendations. The Office has undertaken a restructuring exercise taking into consideration most of those recommendations and it has submitted a proposal to United Nations Headquarters, which, at the time of writing the present report, has not taken an official decision thereon (see paras. 1 – 5 below).

RESOURCES (chapter II)

B. The Office is heavily dependent on voluntary contributions, which are increasingly used to fund core and mandated activities. Despite the strategic importance of human rights for the United Nations, the resources allocated through regular budget appropriations have not reflected such strategic importance. The resources allocated to human rights activities represent barely 1.75 percent of the total United Nations revised appropriation for the 2002-2003 biennium (see paras. 6 and 7 below).

C. Extrabudgetary resources, on the other hand, have increased considerably, representing 64.1 percent of the Office's expenditure estimate for the 2002-2003 biennium (see paras. 8 and 9 below). These funding arrangements place the Office in a difficult position as any disruption in the voluntary contributions received will have a serious impact not only on activities of an extrabudgetary nature, but also on some core and mandated activities. Furthermore, the dependency of the Office on extra-budgetary resources is at the heart of the imbalanced geographical composition of its staff.

ORGANIZATION AND MANAGEMENT STRUCTURES (chapter III)

D. Considering that the Office is in the midst of a transition period and that most of the recommendations made in other reviews, which are in the process of being implemented, are of a structural and/or organizational nature, the present review focuses on management and administrative issues, in particular, with regard to their impact on the recruitment policies and the composition of the staff, as requested by the Commission.

E. The major organizational changes proposed by the Office (see paras. 12 – 16 below) are:

(a) New and more detailed responsibilities are to be assigned to the Deputy High Commissioner with a clearer division between the functions undertaken by the High Commissioner and the Deputy High Commissioner;

(b) Strengthening of the Office of the High Commissioner by the creation of a post of "Chief of Staff" (grade D-2);

(c) Creation of two new branches: Special Procedures Branch and the External Relations Branch;

(d) The Information Management and Technology Unit, formerly part of the Research and Right to Development Branch, is included as part of the Support Services Branch together with the Administrative Section (see para. 22 below).

F. The Inspector has noted a degree of overlapping between the functions of the Deputy High Commissioner and those to be undertaken by the new "Chief of Staff"(see paras., 14, 20 and 21 below). The creation of a D-2 post is not consistent with the request of the General Assembly for a streamlined management. The functions assigned to it are not consistent with the title of "Chief of Staff". Furthermore, the Inspector concurs with the views expressed by the Advisory Committee on Administrative and Budgetary Questions to the effect that the functions assigned to this position overlap with those of the Deputy High Commissioner and of the Director of the New York office.

RECOMMENDATION 1

The new High Commissioner should:
(a) Reconsider the request to create a post of Chief of Staff to perform the functions detailed in the proposed programme budget document, so as to ensure streamlined management and avoid duplication of functions by the senior management of the Office, which should be exercised by the High Commissioner and his Deputy;

(b) Review the grading of the chiefs of branch with a view to ensuring optimal leadership and consistency of structures, presenting budgetary recommendations, as appropriate.

EXECUTIVE DIRECTION AND PROGRAMME MANAGEMENT (chapter IV)

G. Several reviews have highlighted the need for a detailed strategy for the Office of the High Commissioner for Human Rights (OHCHR), from which the medium- and longer-term tangible objectives of the OHCHR organizational units and operational activities should be derived. Although some improvement has been made, the Office still lacks a holistic strategic plan. The lack of a clear, long-term strategy and its communication remains an issue. Interviews with management and staff confirm this point, as more than 60 percent of the staff believe that there is no clear long-term strategy and that if there is any, it is not properly communicated. This underlines a managerial problem, as management should point the direction to follow and lead the way.

H. The Inspector believes that national institutions are a key area, intrinsically linked to the support and development of human rights policies within any geographical area. Thus, the National Institutions Team of the Capacity-building and Field Operations Branch might be integrated within the various geographical teams, as it makes little sense to provide support for national institutions outside of the area of activity of those teams (see para. 28 below).

RECOMMENDATION 2

The organigram of the proposed Capacity-building and Field Operations Branch should be revised by integrating the National Institutions Team within the various geographical teams in order to provide comprehensive support within each geographical area while assuring the availability of expert advice, as requested.

I. The limited experience of OHCHR in field operations in comparison with other United Nations programmes, combined with a chronic lack of regular resources, calls for a higher degree of cooperation with United Nations agencies that have a large and well-established field presence. This would allow the Office to benefit from the

field experience of more experienced partners, as well as from synergies deriving from a United Nations common approach to a specific situation, leading to a more rational use of resources (see paras. 29,30 and 31 below).

RECOMMENDATION 3

(a) Field operations conducted exclusively by OHCHR should be limited to a minimum and to those cases where it has been proven that no alternative exists. The implementation of field operations should be channelled through operational partners whenever possible;

(b) The Office might consider drawing an action plan detailing measures to develop cooperation with different partners such as non-governmental organizations (NGOs), specialized agencies and United Nations programmes.

ADMINISTRATIVE AND FINANCIAL MANAGEMENT (chapter V)

J. The support provided by the Administrative Section to the field representations remains an area in which there is room for considerable improvement. As an example, there is no established system to account for the assets of field representations, nor is there a field procedures manual (see paras. 32 – 35 below).

RECOMMENDATION 4

The Administrative Section should establish a system to account for the assets of field representations and develop a field administrative procedures manual.

K. The Office is part of the Secretariat of the United Nations, and the Secretariat relies heavily on its Integrated Management Information System (IMIS) as its main management information system covering the different areas of activity. The need for the Office to develop a parallel system, the Core Management System, does not seem reasonable. IMIS is currently being used at the Office and it is fully operational for financial and human resources management. Furthermore, scheduled developments include projects such as "IMIS in the field", "IMIS on the Web" and a "Project Management Information System", among others (see paras. 36, 37 and 38 below).

RECOMMENDATION 5

The Office should develop a clear information technology strategy, taking the strategic plan developed by the Secretariat of the United Nations as a starting point to build upon, with a view to avoiding duplication of effort and waste of resources. The development of the Core Management System is duplicative of IMIS and should not be pursued.

HUMAN RESOURCES MANAGEMENT (chapter VI)

L. The unbalanced geographical distribution of staff is an endemic problem (see paras. 42 and 43 below). It has been highlighted by the Commission, which has repeatedly expressed its concern in this regard, requesting the Office to take the necessary measures to correct it. In response the Office has taken various measures (see paras. 45 – 47 below), which have not contributed to the improvement of the situation. Among these measures was the establishment of the Advisory Panel on Personnel Issues, the composition of which is considerably unbalanced, and the request that a "human rights" occupational group be established for the purpose of competitive examinations (see paras. 48, 49 and 51 – 54 below).

RECOMMENDATION 6

The Office should review the mandate of the Advisory Panel on Personnel Issues with a view to ensuring that it contributes towards the improvement of the geographical composition of the staff of the Office in general. The composition of the Panel itself should be reviewed so as to reflect a more balanced geographical distribution of its membership.

RECOMMENDATION 7

The Office should compile annually a list of those countries which are either unrepresented or underrepresented within the Office, and the Secretariat should take that list into consideration when organizing specialized competitive human rights examinations.

M. The General Assembly, in its resolution 57/305, reiterated its request to the Secretary-General to further increase his efforts to improve the composition of the Secretariat by ensuring a wide and equitable geographical distribution of staff in all departments, and requested the Secretary-General "to hold the heads of relevant departments accountable for the human resources action plans and to ensure that they in turn take due account of equitable geographical representation when considering candidates on the lists endorsed by the central review bodies, as well as on the rosters, and to report to the General Assembly annually on progress made by departments in the implementation of their respective human resources action plans" (see para. 55 below).

RECOMMENDATION 8

The imbalance in the geographical distribution of the staff of the Office is an issue that can only be solved through a determined management action. Thus, the High Commissioner should prepare an action plan aimed at reducing the current imbalance and indicating specific targets and deadlines to be achieved.

N. The heavy dependency on voluntary funding is a major issue, which has a considerable impact on the overall management of the Office. A considerable amount of core functions are supported by voluntary contributions and many of the core functions posts are occupied by project personnel. As a consequence, there is a wide diversity in the existing types of contracts for extrabudgetary posts, which has resulted in contractual instability and staff dissatisfaction. The Office submitted a proposal to the Office of Human Resources Management (OHRM) addressing staff contractual issues, which aimed at reducing the number of 200 series contracts of staff performing core functions by converting their 200-series contracts into 100-series contracts, "limited to service with OHCHR". The Office proposed to align gradually its recruitment and contractual policies with those of the United Nations Secretariat once the proposed regularization is made. The Office's proposal goes against the staff selection process currently in place within the Secretariat (see paras. 56 – 62 below).

RECOMMENDATION 9

The Office might offer a transition period, not longer than one year, during which contracts of staff currently under the 200 series of the Staff Rules and performing core functions would be regularized into 100-series contracts "limited to service with OHCHR". Thereafter, the Office should align its recruitment and contractual policies with those of the Secretariat.

RECOMMENDATION 10

The Office should check and align its post-classification criteria with those of the Secretariat before any post is advertised, and should discontinue the practice of advertising extrabudgetary posts without first checking the classification criteria with the United Nations Office at Geneva (UNOG).

I. INTRODUCTION

1. At its fifty-eighth session, the Commission on Human Rights (hereinafter "the Commission") adopted resolution 2002/80 on the composition of the staff of the Office of the United Nations High Commissioner for Human Rights, (hereinafter "the Office"), in paragraph 17 of which it requested

> "the Joint Inspection Unit to undertake a comprehensive review of the management and administration of the Office of the High Commissioner, in particular, with regard to its impact on the recruitment policies and the composition of the staff, and to submit a report thereon to the Commission at its sixtieth session containing concrete proposals for the implementation of the present resolution".

The Economic and Social Council, at its 39th plenary meeting, on 25 July 2002, endorsed the Commission's decision.[1]

2. The mandate of the Office derives from Articles 1, 13 and 55 of the Charter of the United Nations, the Vienna Declaration and Programme of Action and General Assembly resolution 48/141 of 20 December 1993, by which the Assembly established the post of United Nations High Commissioner for Human Rights. In connection with his Programme for Reform of 1997[2], the Secretary-General indicated his decision to consolidate the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Centre for Human Rights into a single Office of the United Nations High Commissioner for Human Rights. The Office's functions and organization are defined in ST/SGB/1997/10.

3. The Joint Inspection Unit (JIU) has conducted the management review of the Office, taking into account the results of numerous recent audits, oversight reviews and evaluation studies and, in particular, the review carried out in 2002 by the Office of Internal Oversight Services (OIOS)[3]. In order to avoid duplication with previous reviews and notwithstanding the request of the Commission for "a comprehensive review of the management and administration" of the Office, the present review is focused on those aspects not covered in depth by other reports and looks specifically into the issue of recruitment policies and the composition of the staff, as requested by the Commission.

4. It should be noted that the Office has undertaken a restructuring exercise, subsequent to the review carried out by OIOS, which also takes into account a special report requested by the High Commissioner on "enhancing OHCHR effectiveness to strengthen human rights at the country level", finalized in February 2003. Taking into consideration the recommendations included in both reports, a proposal for reorganization has been submitted to United Nations Headquarters, which, at the time of writing the present report, has not taken an official decision thereon. In this regard and considering that the OIOS review includes an important number of structural and organizational recommendations, which are mostly in the process of being implemented by the Office, the Inspector does not deem it advisable to address issues currently in transition. Thus, this review avoids structural and/or organizational recommendations and only refers to these matters for information purposes or when a significant contribution leading to efficiency gains could be made.

5. The methodology followed combines analysis of opinions derived from interviews with management and staff of the Office, and facts provided by management, in order to draw conclusions. Additionally, an electronic questionnaire has been distributed to 269 staff members, to which 150 answers were received. Bearing in mind that the Office has recently been the subject of a considerable number of reports, reviews and audits, the high participation (with a 56 percent rate of response) shows the commitment of the staff to seeking improvements and is highly appreciated.

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[1] E/2002/INF/2/Add.2, decision 2002/272.

[2] A/51/950, para. 79.

[3] *Management review of the Office of the United Nations High Commissioner for Human Rights*, Report of the Secretary-General on the activities of the Office of Internal Oversight Services, (A/57/488).

II. RESOURCES

6. Despite the strategic importance of human rights for the United Nations system, which has been highlighted in numerous documents, the resources allocated through regular budget appropriations have not reflected such strategic importance. Table 1 below shows an analysis of regular budget resources allocated to human rights activities from the 1996-1997 biennium to 2002-2003. The resources assigned decreased in percentage and absolute terms from the 1996–1997 biennium to the one of 2000 –2001, increasing only in absolute figures for the 2002-2003 biennium. Despite this increase in the total amount, the Office's share of the total 2002-2003 United Nations revised appropriation still remains below the percentage share of previous bienniums.

Table 1

OHCHR regular budget	1996-1997(1)	1998-1999(1)	2000-2001(1)	2002-2003(2)
OHCHR				
Section 24 (3)	44,136.0	42,297.1	38,056.4	47,576.3
Section 23 (4)	2,218.3	2,883.1	2,580.0	2,905.0
OHCHR total regular budget:	46,354.3	45,180.2	40,636.4	50,481.3
United Nations total:	2,603,300.0	2,529,900.0	2,533,100.0	2,890,800.0
Percentage OHCHR/UN total :	**1.78%**	**1.79%**	**1.60%**	**1.75%**

(1) Expenditure figures.

(2) Revised 2002-2003 appropriation.

(3) Section 24: Human Rights, formerly Section 22.

(4) Human Rights part of Section 23: Regular programme of technical cooperation, formerly Section 21.

7. The issue of the allocation of regular budget resources has also been reflected in the OIOS report, which recommended that the Secretary-General should fully apprise the General Assembly of how the persistent shortfall in regular budget impacts on the mandated activities. The Secretary-General addresses this issue in the proposed programme budget for the biennium 2004-2005 (Section 24), which shows an increase of 12.5 percent over the biennium 2002-2003 in the proposed allocation of regular budget resources for human rights-related activities. The Office's proposed programme budget for the biennium of 2004-2005 represents 1.85 percent of the United Nations total. The General Assembly, in its resolution 57/280 of December 2002, included the promotion of human rights among the priorities for the 2004-2005 biennium.

8. This dearth of regular resources is further compounded by an increase in the number of activities undertaken by the Office. The Office has had to cope with a considerable increase in the number of working groups it supports, as well as in the number of special rapporteurs, special representatives and independent experts it serves. Therefore, the Office is heavily dependant on voluntary contributions to fund core and mandated activities that should remain within the regular budget. In fact, the dependency of the Office on extrabudgetary resources is at the heart of the imbalanced geographical composition of the staff.

9. As illustrated by table 2 below, which provides comparative figures for regular and extrabudgetary resources from 1996-1997 to 2004-2005, the dependency on voluntary funding is increasing. Extrabudgetary resources have increased considerably, representing 64.1 percent of the Office's expenditure estimate for the 2002-2003 biennium. Obviously, these funding arrangements place the Office in a difficult position as any disruption in the voluntary contributions received will have a serious impact not only on activities of an extra-budgetary nature, but also on some core and mandated activities. This risk is compounded by the reliance on a small number of donors. The Office is aware of this risk, and efforts are being made to secure voluntary funding in the future through multi-year contributions, flexible funding and diversification of the donors base.

Table 2

OHCHR total resources	1996-1997	1998-1999	2000-2001	2002-2003(1)	2004-2005(1)
Regular budget (2)	46,354.3	45,180.2	40,636.4	50,481.3	56,510.9
Extrabudgetary funds	36,478.1	34,547.2	47,887.9	90,147.0	90,106.5
Total	**82,832.4**	**79,727.4**	**88,524.3**	**140,628.3**	**146,617.4**
Percentage resources extrabudgetary/total :	44.04%	43.33%	54.09%	64.10%	61.46%

(1) Estimates (A/58/6 (Sect.24), 10 June 2003).

(2) Includes the human rights part of Section 23: Regular programme of technical cooperation.

III. ORGANIZATION AND MANAGEMENT STRUCTURES

10. The specific organizational structure of the Office is defined in a Secretary-General's bulletin[4], and is established along the following lines:

- Office headed by the High Commissioner, who is directly supported by the Deputy High Commissioner and the Staff Office;
- Five separate units reporting directly to the High Commissioner as follows: Administrative Section, Research and Right to Development Branch (RRDB), Support Services Branch (SSB), Activities and Programmes Branch(APB) and the New York Office.

11. As indicated in paragraph 4 above, this initial structure is currently being modified, though the approved new structure remains to be promulgated in a Secretary-General's bulletin.

12. The major changes proposed by the Office in respect of the new organization are described below for information purposes. Instead of five separate units reporting directly to the High Commissioner, the new structure is to be composed of seven units: Support Services (including the Administrative Section and Information Management and Technology), RRDB, Treaties and Commission Branch (formerly SSB), Capacity-building and Field Operations Branch (formerly APB), and the New York Office. Additionally, two new branches are being proposed, the Special Procedures Branch and External Relations Branch.

13. New and more detailed responsibilities are to be assigned to the Deputy High Commissioner with a clearer division between the functions undertaken by the High Commissioner and the Deputy High Commissioner. The report of the Secretary-General, entitled "Administration and management of the Office of the United Nations High Commissioner for Human Rights"[5], includes a detailed description of the functions to be undertaken by the Deputy High Commissioner, who is responsible for policy planning, information management and technology and the administrative services of the Office, in addition to assisting the High Commissioner in different matters, such as acting as Officer-in-Charge during the absence of the High Commissioner; assisting the High Commissioner in the overall direction and supervision of the activities of the human rights programme; carrying out special projects as assigned by the High Commissioner; representing the High Commissioner at meetings and by making statements on his or her behalf; monitoring oversight activities; advising the High Commissioner regarding field operations; and coordinating the development of regional strategies.

14. It has also been proposed to strengthen the Office of the High Commissioner by the creation of a post of "Chief of Staff" (grade D-2) undertaking the following functions[6]: assisting the High Commissioner in maintaining relations with Governments, United Nations agencies and entities, international organizations, regional and national institutions, non-governmental organizations (NGOs), the private sector and academia; maintaining liaison on policy matters with the Executive Office of the Secretary-General and other relevant offices at Headquarters, as well as with the spokespersons of the Secretary-General at New York and Geneva, and the media; carrying out fund-raising functions and special projects as assigned by the High Commissioner. Pending approval of this post, the Office has established a position, and engaged an official, at the L-7 level, financed from general temporary assistance.

15. The major areas of responsibility of the new External Relations Branch are : resource mobilization, partnership with NGOs, media relations and communication strategy. These functions were previously under the responsibility of the Staff Office of the High Commissioner.

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[4] *Organization of the Office of the United Nations High Commissioner for Human Rights*, (ST/SGB/1997/10).
[5] A/58/569.
[6] Ibid.

16. The functions assigned to the proposed new Special Procedures Branch, i.e. to provide substantive and administrative support to human rights fact-finding and investigation mechanisms, were previously under the responsibility of APB.

17. The programme budget proposals for 2004-2005 include specific arrangements and resources to address the issues of effectiveness and management. In order to implement the above changes, the Office has included in its proposed programme budget for the biennium 2004-2005 a request for eight new posts (one D-2, one D-1, two P-5, three P-4, and one P-3) and the conversion from temporary assistance of five posts (one P-5, one P-4, and three P-3). In its related report, the Advisory Committee on Administrative and Budgetary Questions (ACABQ)[7] has recommended the establishment of two P-5 posts (one on a temporary basis), three P-4 posts and the conversion of the five posts previously funded through temporary assistance. Consideration of the establishment of the D-2 post, referred to in paragraph 14 above, is to be postponed to give the new High Commissioner the opportunity to review the matter. ACABQ recommended against the creation of the remaining proposed posts.

18. The Inspector has noted a degree of overlapping between the functions of the Deputy High Commissioner and those to be undertaken by the new Chief of Staff. The creation of an L-7 post, a level equivalent to D-2, is not consistent with the request of the General Assembly for a streamlined management. In this respect, it adds another layer to the current management structure in which the grades of the chiefs of branch or section reporting directly to the High Commissioner ranged from D-1 to P-5. ACABQ also observed that the functions assigned to this position overlap with those of the Deputy High Commissioner and of the Director of the New York Office of OHCHR and, furthermore, that an official at the L-7 level had already been selected and has been carrying out responsibilities since early July 2003, notwithstanding the fact that it was not submitted to the Committee for the review required by General Assembly resolution 35/217, section II, paragraph 2. ACABQ expressed concern about the action taken by the Secretariat to establish this L-7 position, which, in effect, prejudges the outcome of the consideration by the General Assembly of the question of the D-2 post, and recommended that consideration of the establishment of the D-2 post be postponed to give the new High Commissioner the opportunity to review the matter.

19. The Inspector cannot but concur in the views of ACABQ referred to above. He is of the view that the post and the functions to be undertaken by the Chief of Staff should be reconsidered. The functions assigned to it, described above in paragraph 14, are not consistent with the title of "Chief of Staff". The post was initially intended to strengthen the management of the Office, a function that, in the Inspector's view, should be exercised by the High Commissioner and his Deputy.

See RECOMMENDATION 1

20. With regard to the establishment of the Special Procedures Branch (SPB), the proposed programme budget for the biennium 2004-2005 included proposals for a D-1 post as head of the Branch, a P-5 post and a P-4 post to strengthen the thematic teams. In its report[8] ACABQ recommended against the establishment of the D-1 post, notwithstanding the fact that other heads of branch are graded at the D-1 level.

21. The Inspector welcomes the establishment of an Information Management and Technology Section reporting directly to the Deputy High Commissioner. The Information Technology and Management Unit was previously part of RRDB. He concurs with the idea of an independent information management unit able to establish, plan, implement and oversee an overall information management strategy for the Office, a strategy that does not exist at present. The new section should maintain constant dialogue with the relevant entities within the United Nations Secretariat. This would allow for an independent approach to the servicing of the information management requirements of the various branches, and would enable benefiting from the synergies derived from a closer cooperation with the Secretariat and maximizing the

[7] A/58/7/Add.12.
[8] Ibid.

impact of the very limited resources available in this area, which might otherwise be wasted in scattered and partial initiatives.

22. The Inspector believes that most of the proposals made by the Office are sound and constitute a first step in improving the effectiveness and management of the Office. The creation of two new branches, one focused on a much-needed improvement in the support provided to the Special Procedures and the other on the development of a comprehensive communication strategy combined with fund-raising activities, should lead to a better functioning of the Office. The proposals made address the major structural problems faced by the Office, which have been highlighted in different reports and are, in general, consistent with requests made by the General Assembly, which has encouraged the Secretary-General to improve and streamline the management of the Office.[9]

[9] A/RES/57/300.

IV. EXECUTIVE DIRECTION AND PROGRAMME MANAGEMENT

23. The executive direction of the Office is exercised by the High Commissioner, assisted by the Deputy High Commissioner. The Policy Review and Management Board Committee is the main body involved in the executive management of the Office.

24. The restructuring being undertaken by the Office is in response to various organizational recommendations contained in previous reviews. Notably, the OIOS review highlighted the need for a "detailed strategy for the Office, from which the medium - and longer-term tangible objectives of the OHCHR organizational units and operational activities should be derived".[10]

25. Although some progress has been made in this regard, the lack of a clear long-term strategy and its communication remains an issue. Interviews with management and staff confirm this point, which has been further reaffirmed in the results of the questionnaire distributed to staff (see chap. VII and annex II below). More than 60 percent of the staff believe that there is no clear long-term strategy and that, if there is any, it is not properly communicated. This underlines a managerial problem, as management should point the direction to follow and lead the way.

26. The leadership capacity of management is questioned by more than half of the staff overall, with stronger criticism within the APB and the Administrative Section, which confirms the managerial nature of most of the issues that need to be addressed.

27. The numerous reviews and audits have produced a considerable number of recommendations, many of which have not been fully implemented yet. The Office management knows now what needs to be done and the emphasis should be placed on implementation and follow-up. The lack of action on recommendations and of adequate follow-up mechanisms are major deficiencies which highlight a managerial problem. It is noted, however, that the Office is trying to implement, in a structured manner, some of those recommendations through the proposals contained in its proposed programme budget for the biennium 2004-2005.

28. Additionally, a draft plan of action has been prepared in line with "Action 2" of the Secretary-General's report entitled "Strengthening of the United Nations: an agenda for further change",[11] which recommends the strengthening of national human rights promotion and protection systems. The plan aims at developing the ability of the United Nations system to provide an integrated and consistent response to Member States that request support in developing the capacities of their national systems. The United Nations country teams are basic vehicles for the plan. In this respect, the Inspector believes that the organigram of the proposed Capacity-building and Field Operations Branch should be revised. The National Institutions Team might be integrated within the different geographical teams, as it makes little sense to provide support for national institutions outside of the area of activity of the different geographical teams. National institutions are a key area, intrinsically linked to the support and development of human rights policies within any geographical area.

See RECOMMENDATION 2

29. The Office, through its strategic plan, should seek ways to make use of its resources in the most efficient way. In particular, it should find a balance between preventive human rights action and reaction to human rights violations. This dilemma is a very complex one, to which this review does not claim to provide answers through simple recommendations, but the way ahead has been highlighted by the Secretary-General in his reform programme, describing human rights as an area cutting across each of the four substantive fields of work of the United Nations: peace and security, economic and social affairs, development cooperation and humanitarian affairs.

[10] A/57/488, para. 66.
[11] A/57/387.

30. The Office must continue to focus both on prevention and reaction. However, while preventive human rights action is fundamental and a core area in the Office's mandate, and requires a specific know-how only available within the Office, reaction to human rights violations and the implementation of field operations should be channelled through operational partners whenever possible. The draft action plan for strengthening human rights at country level is a positive initiative focused on prevention, and the Office should draw another action plan detailing measures to develop cooperation with different partners such as NGOs, specialized agencies and United Nations programmes.

31. The relatively limited experience of the Office in field operations in comparison with other United Nations programmes, combined with a chronic lack of regular resources, call for a higher degree of cooperation with United Nations agencies that have a large and well-established field presence. This would allow the Office to benefit from the field experience of more experienced partners, as well as from synergies deriving from a United Nations common approach to a specific situation, leading to a more rational use of resources. Field operations conducted exclusively by OHCHR should be limited to a minimum and to those cases where it has been proven that no alternative exists.

See RECOMMENDATION 3

V. ADMINISTRATIVE AND FINANCIAL MANAGEMENT

32. The Administrative Section provides programme-support services for all substantive and operational activities of the Office. These services relate to financial and human resources planning and management, as well as general office administration. The Section also performs a number of additional functions with respect to extrabudgetary activities, including management of contributions, oversight of project formulation, coordination of executing agents providing operational and logistical support for OHCHR activities and security coordination for the Office.

33. The Administrative Section was strengthened recently and is structured in three areas: human resources management, budget and finance and General Services and Field Support. As for other areas, a number of recommendations were made in recent audits, which are currently under implementation. OIOS indicated that " ... to achieve further improvements, the capacity of the administration needs to be further enhanced both in terms of its numerical strength and its expertise, with special emphasis on its support to the field presence".[12]

34. In this regard, the Administrative Section represents 5 percent of the total staff of the Office (including field offices and project staff administered by partners), or 10 percent of the staff if field- office staff are excluded. The Inspector believes that this is a reasonable quantitative level of resources, particularly considering that Geneva-based project staff are administered by the United Nations Office at Geneva (UNOG) and field project staff by United Nations Office for Project Services (UNOPS) and that there may be room to further improve staff productivity through the optimal use of information technology.

35. The support provided by the Administrative Section to the field representations remains an area in which there is room for considerable improvement. For instance, there is no established system to account for the assets of field representations. The Administrative Section should establish such a system and develop a field administrative procedures manual.

See RECOMMENDATION 4

36. Following several recommendations, the Office is engaged in the development and implementation of a "core management system", with a view to improving systems and procedures needed to manage the Office's human and financial resources. This activity began in 2001 and, according to the information obtained through interviews or provided in several papers published by the Office, such as the Annual Appeal, is focused on five main elements: the development of a data warehouse, contributions management, financial management, project management and human resources management. The core management system is not yet fully operational.

37. In this respect, it should be recalled that the Office is part of the Secretariat of the United Nations. The Secretariat heavily relies on its Integrated Management Information System (IMIS) as its main management information system covering the different areas of activity. The report of the Secretary-General entitled "Information and communication technology strategy" indicates that:

> "At the core of the administrative structure and workflows is IMIS, which supports personnel, finance, payroll, procurement, travel and related administrative functions. Its integrated database ensures the integrity of data and single-source input to the Organization's financial statements and related reporting.... A premise of the proposed [information and communications technology] ICT strategy is that IMIS will continue to play a pre-eminent role in the administrative processes of the Secretariat for at least the next five years...".[13]

[12] A/57/488, para 54.
[13] A/57/620, paras. 35 and 37.

38. Bearing the above in mind, the need for the Office to develop a parallel system, the core management system, is not reasonable. IMIS is used at OHCHR and is fully operational for financial and human resources management. Furthermore, scheduled developments include projects such as "IMIS in the field", "IMIS on the Web" and a "Project Management Information System", among others. The Office should develop a clear information technology strategy, taking the strategic plan developed by the Secretariat of the United Nations as a starting point and building on it. The Office might have some specific needs not yet covered by IMIS, in particular issues related to project management, but a closer communication with the central Secretariat in this respect would be very beneficial for the Office.

See RECOMMENDATION 5

39. In the past, there were some difficulties in the relationship of the Office with some implementing partners - UNOPS and UNOG, in particular. In this case, delays by UNOPS in reporting expenditures incurred in the context of its cooperation with the Office created some problems. The Board of Auditors noted that the Office planned to transfer all headquarters-based projects from UNOPS to UNOG and recommended that OHCHR draft a memorandum of understanding with UNOPS to cover the remaining operations entrusted to it.[14] Subsequently, the arrangements between the two parties were revised.

40. Most of the staff working in headquarters-based projects are being administered by UNOG since 1 January 2003. Regarding the relationship with UNOG, although some improvements have been made, delays in the issuing of allotments were reported by the Office. A memorandum of understanding between the parties is in the process of being finalized in order to reach the necessary service level agreements. Implementation should be expedited, given the fact that the cooperation between the two parties started about one year ago.

[14] A/57/5(Vol. I), paras 230 and 231.

VI. HUMAN RESOURCES MANAGEMENT

41. In accordance with the mandate given to JIU by the Commission for this management review, it focuses on this key area and addresses the issues of the imbalanced geographical distribution, the contractual situation of staff, as well as several aspects of human resources management raised through the analysis of the answers included in the questionnaire distributed to staff. Additionally, a staff profile has been drawn with special emphasis on gender, type of contract and distribution of grades among staff. The relevant graphic charts can be found in annex I to the present report.

A. Geographical distribution of the staff

42. The unbalanced geographical distribution of staff is a serious problem. It has been highlighted by the Commission, which expressed its concern in this regard several times during the past years. In fact, the request to correct the imbalance has repeatedly been conveyed by the Commission through different resolutions (1997/76, 1998/46, 1999/70, 2000/73, 2001/78, 2002/80 and 2003/74) since 1997, when the current arrangements for the Office were introduced.

43. Each of the above resolutions was followed, as requested by the Commission, by a report of the High Commissioner on the composition of the staff of the Office, including regular and non-regular staff, listing them by region according to the five groups established by the General Assembly (African States, Asian States, Latin American and Caribbean States, Western European and Other States and Eastern European States) and indicating grade, nationality and gender. During these past years, despite the repeated requests by the Commission, the imbalance in geographical distribution has worsened. The figures below show the geographical distribution of staff in the past six years and have been taken from the relevant High Commissioner's reports, which reflected the situation as at 1 December 2002. These figures have been supplemented and updated, with the inclusion of data as at 1 October 2003 under the last column of the table.

Table 3
Posts subject to geographical distribution

	1998	%	1999	%	2000	%	2001	%	2002	%	2003(1)	%	2003(2)	%
Africa	11	14.5	12	14.8	11	14.7	10	12.8	12	13.2	10	11.6	8	9.2
Asia	13	17.1	15	18.5	15	20	13	16.7	17	18.7	16	18.6	17	19.5
LA + C	5	6.6	8	9.9	8	10.7	9	11.5	9	9.9	9	10.5	7	8
EE	5	6.6	5	6.2	5	6.7	5	6.4	5	5.5	6	7	7	8
WEO	42	55.3	41	50.6	36	48	41	52.6	48	52.7	45	52.3	48	55.2
Total	**76**		**81**		**75**		**78**		**91**		**86**		**87**	

(1) Source: E/CN.4/2003/111, 10 December 2002.

(2) Source: OHCHR, 1 October 2003.

Table 4
Posts not subject to geographical distribution

	1998	%	1999	%	2000	%	2001	%	2002	%	2003(1)	%	2003(2)	%
Africa	32	31.1	20	26.7	25	26	21	18.8	22	16.3	24	16	23	13.9
Asia	9	8.7	4	5.3	1	1	6	5.4	9	6.7	8	5.3	11	6.7
LA + C	7	6.8	7	9.3	8	8.3	10	8.9	13	9.6	15	10	20	12.1
EE	1	1	1	1.3	1	1	6	5.4	6	4.4	7	4.7	7	4.2
WEO	54	52.4	43	57.3	61	63	69	61.6	85	63	96	64	104	63
Total	**103**		**75**		**96**		**112**		**135**		**150**		**165**	

(1) Source: E/CN.4/2003/111, 10 December 2002.

(2) Source: OHCHR, 1 October 2003.

Table 5
Total posts

	1998	%	1999	%	2000	%	2001	%	2002	%	2003(1)	%	2003(2)	%
Africa	43	24.0	32	20.5	36	21.0	31	16.3	34	15.0	34	14.4	31	12.3
Asia	22	12.3	19	12.2	16	9.4	19	10.0	26	11.5	24	10.1	28	11.1
LA + C	12	6.7	15	9.6	16	9.4	19	10.0	22	9.7	24	10.1	27	10.7
EE	6	3.4	6	3.8	6	3.5	11	5.8	11	4.9	13	5.5	14	5.6
WEO	96	53.6	84	53.8	97	56.7	110	57.9	133	58.8	141	59.7	152	60.3
Total	**179**		**156**		**171**		**190**		**226**		**236**		**252**	

(1) Source: E/CN.4/2003/111, 10 December 2002.

(2) Source: OHCHR, 1 October 2003.

44. The Commission repeatedly requested the Office to include in the High Commissioner's report the measures adopted to improve the current situation and their results. The Office's answers to these requests have included different proposals, repeated in the High Commissioner's reports of 2000 (E/CN.4/2001/100, 5 December 2000), 2001 (E/CN.4/2002/115, 28 December 2001) and 2002 (E/CN.4/2003/111, 10 December 2002).

45. The following measures have been taken by the Office, as indicated in the relevant High Commissioner's reports:

(a) Establishment and subsequent strengthening of the OHCHR Advisory Panel on Personnel Issues. This internal management body has been entrusted with the responsibility of evaluating all recommendations for filling temporary posts at OHCHR headquarters and in the field, upgrading temporary staff, and lateral transfers, with a view to ensuring the highest standards of efficiency, competence and integrity, as well as equitable geographical distribution;

(b) Systematic development of job descriptions and consistent advertisement of vacancies in respect of temporary positions at OHCHR headquarters and in the field, and circulation of openings on the OHCHR web site.

46. Another initiative reportedly taken by the Office to promote the recruitment of nationals of developing countries, in the context of the mainstreaming of human rights throughout the United Nations system, is the enhancement of its roster of applicants. This could indeed prove very useful, particularly when the Office is called upon to provide assistance for recruitment at short notice to other United Nations departments such as the Department of Peacekeeping Operations and the Department of Political Affairs in connection with peacekeeping and related operations.

47. In an effort to widen the pool of candidates for human rights positions, the High Commissioner recommended that the Office of Human Resources Management (OHRM) establish a human rights occupational group. It was felt that such a measure would contribute to attracting to the area of human rights qualified junior professionals from unrepresented and underrepresented countries. OHRM agreed and in May 2001 OHRM organized a specialized human rights competitive examination in which nationals of 17 Member States participated.

48. Nevertheless, the measures described above have not yet helped to improve the situation, as reflected in tables 3, 4 and 5 above and as confirmed by the geographical distribution of new recruitments during the period 1 January 2002 – 1 June 2003. Table 6 below shows that recruitments during this period still reflect a biased situation, with a predominant number of recruitments from one region, i.e. Western European and Other States.

Table 6

OHCHR recruitments for the period 1 January 2002 to 1 June 2003*

Region	Posts subject to geographical distribution	Posts not subject to geographical distribution	Total	Percentage
Africa	1	12	13	13.4%
Asia	1	6	7	7.2%
Latin America and the Caribbean	2	9	11	11.3%
Eastern Europe	2	3	5	5.2%
Western Europe and other States	10	51	61	62.9%
Total	**16**	**81**	**97**	**100.0%**

* Source: data provided by OHCHR, June 2003.

49. With respect to the measures taken by the Office to reduce the imbalance in the geographical distribution of the staff, it should be noted that the establishment of the Advisory Panel on Personnel Issues, although a reasonable initiative, should have taken into consideration the geographical distribution of its very membership. The current composition of the Panel is considerably inequitable, with only one member out of six, being from a developing country. The Office should redefine the composition of the Panel with a view to reflecting a more balanced geographical distribution of its membership.

See RECOMMENDATION 6

50. Regarding the second initiative taken by the Office to improve the geographical balance of its staff, namely, "a systematic development of job descriptions and consistent advertisement of vacancies in respect of temporary positions at OHCHR headquarters and in the field, and circulation of openings on the OHCHR web site", it is not clear how this action could significantly help to solve the issue considering that candidates from developing countries may have limited access to Internet facilities.

51. The Inspector believes that the action taken by the Office, recommending that OHRM establish a human rights occupational group, is a very positive initiative. However, it would have been more effective had the Office provided OHRM with a list of the countries unrepresented and underrepresented at the Office, which are not necessarily the same as for the Secretariat as a whole. Following the specialized examination, there are currently 12 candidates on the roster, 11 of whom are from Western European countries.

52. In this regard, it should be recalled that the Office is part of the United Nations Secretariat, which, in accordance with a number of General Assembly resolutions, submits annually an official report to the Assembly on the composition of the staff at the global Secretariat level and not at the departmental level. This fact might lead to contradictory situations, where a specific country belonging to one of those regions underrepresented within the Office might be one of those overrepresented at the Secretariat level, or vice versa.

53. In order to avoid this type of inconsistencies, a list should be compiled annually of those countries, which are either unrepresented or underrepresented within the Office, and the Secretariat should take that list into consideration when organizing specialized human rights competitive examinations.

See RECOMMENDATION 7

54. Given the fact that the composition of the staff of the United Nations Secretariat is assessed at the global Secretariat level and that there are no specific indicators of what would be an optimal balanced geographical distribution of the staff at the departmental level, OHRM might consider the possibility of providing guidance to the Office, indicating the target figures to be achieved for each of the regional groups established by the General Assembly.

55. The General Assembly, in paragraphs 32 and 33 of its resolution 57/305 of 15 April 2003, reiterated its request to the Secretary-General to further increase his efforts to improve the composition of the Secretariat by ensuring a wide and equitable geographical distribution of staff in all departments, and requested the Secretary-General "to hold the heads of relevant departments accountable for the human resources action plans and to ensure that they in turn take due account of equitable geographical representation when considering candidates on the lists endorsed by the central review bodies, as well as on the rosters, and to report to the General Assembly annually on progress made by departments in the implementation of their respective human resources action plans". The inequity in the geographical distribution of the staff of the Office is an issue that can only be solved through a determined management action. In this respect, the High Commissioner should prepare an action plan aimed at reducing the current imbalance and indicating specific targets and deadlines to be achieved.

See RECOMMENDATION 8

B. Post and contractual issues

56. The heavy dependency on voluntary funding, highlighted in several reviews, is a major issue, which has a considerable impact on the overall management of the Office. In particular, human resources management cannot but be deeply influenced by the reliance on voluntary funding. A considerable number of core functions are supported by voluntary contributions and many of the core-function posts are occupied by project personnel. As a consequence, there is a wide diversity in the existing types of contracts for extra-budgetary posts, which has resulted in contractual instability and staff dissatisfaction.

57. At its 18th meeting, held on 23 June 2003, the Committee for Programme and Coordination considered section 24, Human Rights, of the proposed programme budget for the biennium 2004-2005.[15] Endorsing a recommendation made by OIOS, it was decided that a new expected accomplishment should be included in the programme budget as follows: "Systematic action is taken to reclassify all posts in the new organizational structure according to their levels and types of service and to decide whether they belong to the 100 or 200 series".[16]

58. Additionally, the Committee requested that a new measurement of achievement be included as follows: " The reduction in the number of staff under the 200 series of staff rules performing core functions of the Office of the High Commissioner for Human Rights".[17]

59. In September 2003, the Office submitted a proposal to UNOG addressing staff contractual issues. The proposal was aimed at reducing the number of 200-series contracts of staff performing core functions by converting their 200-series contracts administered by UNOG since 1 January 2003 into 100-series contracts, "limited to service with OHCHR". The Office proposed to align gradually its recruitment and contractual policies with those of the United Nations Secretariat once the proposed regularization is made.

60. The proposal goes against the staff selection process currently in place within the Secretariat, as it implies that P-2 and P-3 posts might be filled by staff who have not gone through the National Competitive Examination (NCE) process, as mandated by the General Assembly. At the same time, it is to be noted that current staff in P-2 posts filled through the NCE process are subject to stringent mobility and promotion conditions that would not be applicable to those staff regularized under this proposal.

61. Additionally, the Office is requesting that all P-4-level posts advertised on Galaxy, regardless of whether they are funded from the regular budget or extrabudgetary sources, be open to the "60 days candidates" to allow those staff members who have not gone through the Appointment and Promotion Board, the Central Review Bodies or the NCE channels to apply for a post under the same conditions as those who have. This implies giving the same treatment to both internal and external candidates, which also runs against current administrative rules as described in the applicable administrative instruction.[18]

62. As of the time of writing the present report, no official decision has been made by the OHRM with regard to this request. The Inspector considers that fair treatment should be given to those staff members whose contracts are in the process of being regularized and that their contribution to the work of the Office must be recognized. At the same time, however, the acquired rights of regular staff should be respected. A possible transition period of one year could be offered, regularizing and extending contracts "limited to service with OHCHR", under the 100 series, only for core-functions posts, with or without break in service. This should not be a major concern as the "break-in-service" can be managed by the Office in order to avoid the coincidence of a high number of staff taking the break of service at the same time. Once this transition period has ended, the Office should align its recruitment processes with those in place at that time within the Secretariat, in particular the use of the Galaxy system.

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[15] *Proposed programme budget for the biennium 2004-2005*, Part VI Human rights and humanitarian affairs, Section 24 Human rights, (A/58/6 (Sect.24)), 10 June 2003.

[16] *Programme questions: proposed programme budget for the biennium 2004-2005*, Committee for Programme and Coordination, (E/AC.51/2003/L.5/Add.25), 3 July 2003.

[17] Ibid.

[18] *Staff selection system*, Administrative instruction, (ST/AI/2002/4), 23 April 2002.

See RECOMMENDATION 9

63. According to the figures provided by the Office in June 2003 regarding the breakdown of staff by contract type and as indicated in table 1 of annex I, the current contractual mix shows that 45 percent of the staff have fixed-term appointments and 30 percent hold short-term appointments. Only 10 percent of staff have permanent contracts and 2 percent hold probationary appointments. Although the number of short-term appointments might seem high, the current funding structure of the Office and its dependency on voluntary funding justifies such figure.

64. It has been reported that the Office does not always comply with established policies for the determination of post classification criteria before advertising extrabudgetary posts, a practice that should be corrected.

See RECOMMENDATION 10

VII. QUESTIONNAIRE ANALYSIS – MISCELLANEOUS MANAGEMENT ISSUES

65. The subjects included under this section are the conclusions drawn after the analysis of the questionnaire, which was distributed electronically to 269 staff members, 150 answers having being received. This high response rate (56 percent) shows one of the strong points of the Office, which is the commitment of the majority of its staff to seeking improvements and offering constructive criticism. In an effort to add value to the present report, the results of the questionnaire, broken down by branch and including the total for the Office, are attached as annex II. It is hoped that these results will be helpful for the management of the Office.

66. Strategy. 62 percent of staff believe that there is not a well-defined, long-term strategy within OHCHR. This issue has also been repeatedly raised during the interviews conducted. Senior management should take note, prepare and communicate a strategic plan, as recommended in previous reviews.

67. Objectives and performance appraisal. Staff members know their individual objectives (74 percent) and those of their team, unit or service (72 percent). Branch objectives are known (52 percent) but to a lesser extent. On the other hand, more than half of the staff, or 55 percent, believe that the current performance appraisal system (PAS) is not fairly and evenly applied. This issue was also raised in various interviews. Job descriptions appear to be consistent with the current work undertaken by the staff in general. However, there are discrepancies between branches with regard to workload and training results. It is hoped that the results, attached as annex II, will form the basis for the necessary analysis and, if needed, the subsequent action plans to be devised by the management of each branch.

68. Leadership. More than half of the staff consider that both senior and middle-level management do not provide strong leadership. This, again, highlights a managerial problem. In this respect, OIOS indicated in its review that "middle-level managerial culture could benefit from more consistency and professionalism", requesting the top leadership to infuse a healthy dose of managerial discipline at all levels, to conduct management training as required and to hold managers accountable for discharging their responsibilities. The Inspector concurs with the view expressed by OIOS and wishes to stress that managers need to give staff a clear sense of purpose and direction. On the positive side, results obtained from the questionnaire show that the staff feel empowered to carry out their duties, that teamwork is encouraged and that the opinions of the staff are taken into consideration on decisions affecting their work.

69. Transparency. This is a major issue within the Office, as 73 percent of the staff do not believe that transparency is a guiding principle in decision-making. This could only be solved through improved communication processes. Most of the branches, sections or units hold regular communication meetings, but that is not enough to develop a sense of transparency. Management should look into the quality of communication and adopt a more open approach to decision-making.

70. Contractual arrangements. The response to the question as to satisfaction with contractual arrangements (Q.15), to which 49 percent responded positively, can be explained by the fact that 81 percent of the answers received were sent by staff holding either permanent or fixed-term contracts.

71. Career development and mobility. 66 percent of the answers show a strong desire among staff members to develop their respective careers within OHCHR, although only 27 percent of the staff who answered believe that this is possible. At the moment, there is no career counselling facility within OHCHR, and consideration should be given to providing such facility. As to mobility, 61 percent of the staff who answered the questionnaire would like to have the possibility of developing part of their careers in the field. Only 24 percent of the staff who answered are not interested in participating in field operations.

72. Geographical distribution. Although this issue has already been dealt with in this review, it is important to note that more than half of the staff who answered (53 percent) believe that there is not a balanced representation of different nationalities within the Office. Additionally, 56 percent of the answers indicate that a different mix of nationalities would be of significant benefit to OHCHR.

73. Overall staff satisfaction. This does not seem to be a problem according to the answers received (47 percent of the answers show a reasonable level of satisfaction with current work, 11 percent are very satisfied and only 20 percent of the answers correspond to low and very low levels of satisfaction). In order to fully understand this result, the profile of staff who answered should be considered, in particular the high percentage (81 percent) of those who hold either permanent or fixed-term contracts, as well as the 69 percent of answers received from professional staff. Additionally, it is to be noted that 60 percent of the answers received came from staff with a seniority of less than five years.

ANNEXES

Annex I

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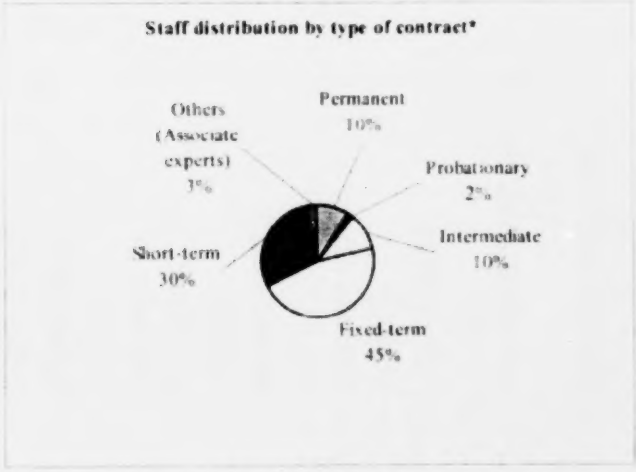
1. Staff distribution by type of contract

Table 1



* Data as provided by OHCHR in November 2003.

2. Gender distribution

Table 2.1

Gender distribution (total staff)

Table 2.2

General services

Table 2.3

Professional

Table 2.4

Gender distribution by grade (professional)

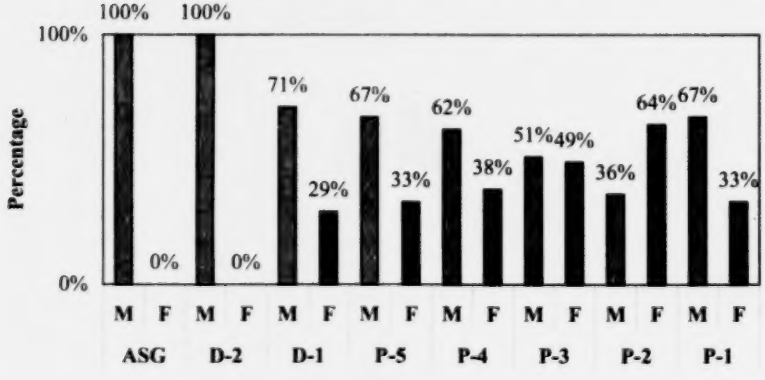
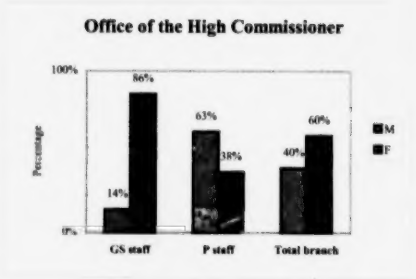
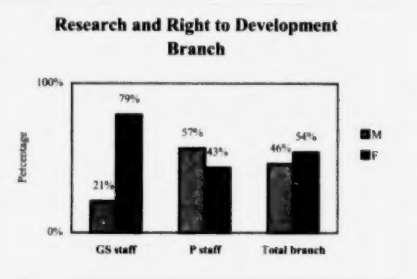
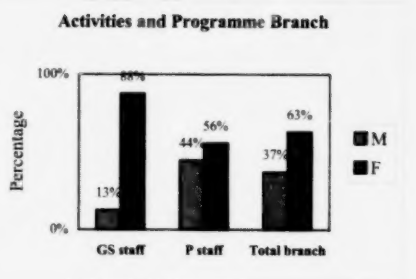
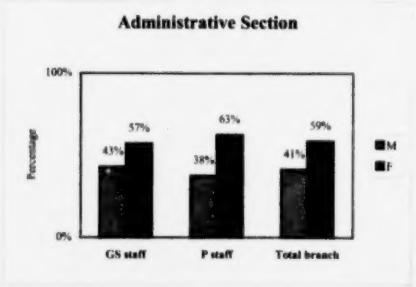


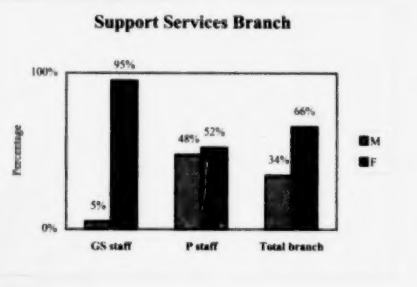
Table 2.5 Gender distribution by branch

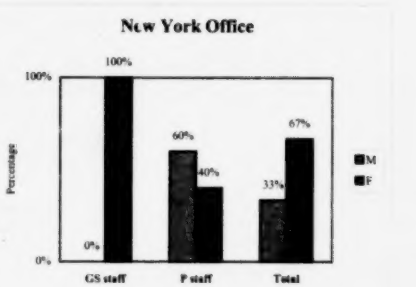


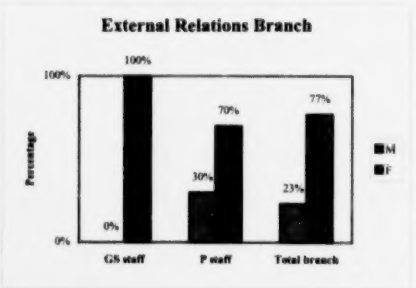


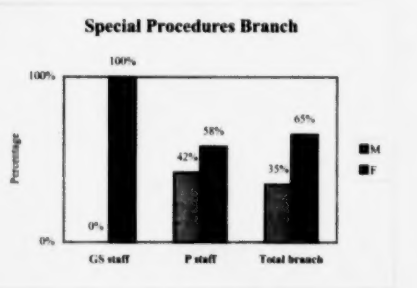


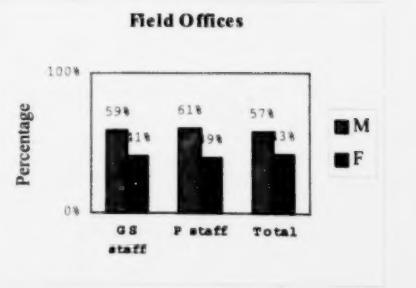






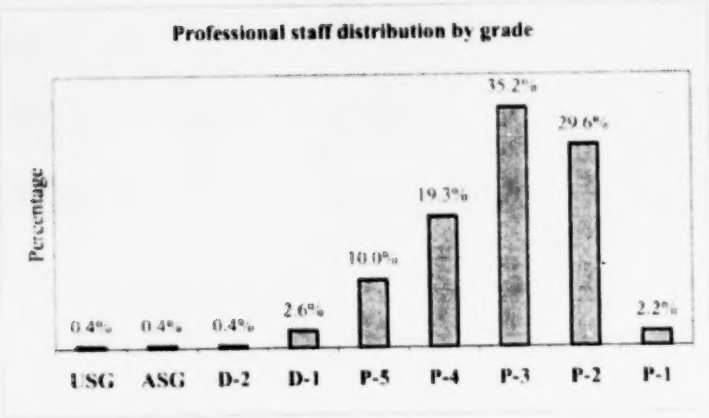






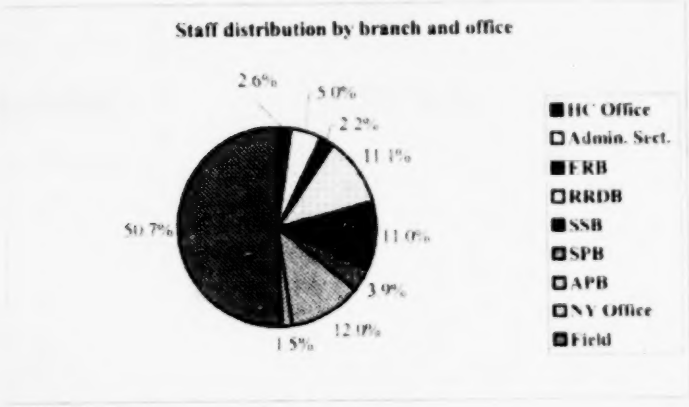
3. Staff distribution by grade

Table 3



4. Staff distribution by branch and office

Table 4.1



Annex II
Analysis of questionnaire distributed to OHCHR staff

Survey question	Answer options*	Activities and Programme Branch	Research and Right to Development Branch	Support Services Branch	Office of the High Commissioner	Administrative and Systems Support Section	OHCHR
Q1: There is a well-defined long-term strategy within the Office	Disagree	71%	60%	57%	61%	40%	62%
	No opinion	4%	23%	23%	22%	40%	18%
	Agree	24%	17%	20%	17%	20%	20%
Q2: The Office strategy is clearly communicated to you	Disagree	73%	57%	66%	65%	70%	67%
	No opinion	7%	29%	6%	30%	10%	15%
	Agree	20%	14%	29%	4%	20%	18%
Q3: Your branch objectives and strategy are well known by you	Disagree	44%	40%	34%	26%	30%	37%
	No opinion	11%	14%	9%	9%	10%	11%
	Agree	44%	46%	57%	65%	60%	53%
Q4: Your team/unit/service objectives are well known by you	Disagree	24%	17%	17%	30%	20%	21%
	No opinion	18%	6%	0%	0%	10%	7%
	Agree	58%	77%	83%	70%	70%	71%
Q5: You have clear and realistic objectives in your work	Disagree	20%	14%	17%	17%	10%	17%
	No opinion	13%	9%	0%	13%	0%	8%
	Agree	67%	77%	83%	70%	90%	75%
Q6: There is a strong leadership within the Office	(a) Senior management level						
	Disagree	76%	57%	37%	35%	70%	56%
	No opinion	11%	23%	14%	22%	30%	17%
	Agree	13%	20%	49%	43%	0%	27%
	(b) Middle management level						
	Disagree	64%	54%	43%	52%	50%	55%
	No opinion	11%	29%	14%	26%	30%	19%
	Agree	24%	17%	43%	22%	20%	26%
Q7: You feel empowered to carry out your duties	Disagree	38%	20%	29%	13%	10%	25%
	No opinion	11%	9%	9%	35%	10%	13%
	Agree	51%	71%	63%	52%	80%	61%

Survey question	Answer options*	Activities and Programme Branch	Research and Right to Development Branch	Support Services Branch	Office of the High Commissioner	Administrative and Systems Support Section	OHCHR
Q8: Authority is delegated when required	Disagree	42%	20%	31%	26%	30%	31%
	No opinion	13%	20%	14%	22%	0%	15%
	Agree	44%	60%	54%	52%	70%	54%
Q9: Transparency is a guiding principle in decision-making within OHCHR	Disagree	76%	77%	71%	57%	80%	73%
	No opinion	16%	17%	20%	35%	10%	19%
	Agree	9%	6%	9%	9%	10%	8%
Q10: Your opinion is taken into consideration when decisions affect your work	Disagree	38%	17%	43%	30%	20%	31%
	No opinion	13%	26%	11%	13%	20%	16%
	Agree	49%	57%	46%	57%	60%	53%
Q11: There is appropriate feedback between you and your direct supervisor	Disagree	40%	14%	17%	43%	30%	28%
	No opinion	4%	11%	14%	0%	20%	9%
	Agree	56%	74%	69%	57%	50%	63%
Q12: The established joint staff/management machinery works effectively at OHCHR	Disagree	44%	49%	40%	26%	60%	42%
	No opinion	51%	40%	46%	57%	0%	45%
	Agree	4%	11%	14%	17%	40%	13%
Q13: Teamwork is encouraged	Disagree	20%	23%	34%	22%	30%	25%
	No opinion	24%	29%	6%	9%	0%	17%
	Agree	56%	49%	60%	70%	70%	58%
Q14: The PAS process is fair and evenly applied within your team/unit/service	Disagree	44%	43%	54%	26%	50%	45%
	No opinion	31%	31%	11%	43%	0%	26%
	Agree	24%	26%	34%	30%	50%	29%
Q15: You are satisfied with your current contractual arrangement	Disagree	56%	31%	34%	52%	10%	41%
	No opinion	4%	3%	17%	13%	20%	9%
	Agree	40%	66%	49%	35%	70%	49%
Q16: OHCHR is the place where you wish to develop your professional career	Disagree	16%	17%	11%	4%	20%	14%
	No opinion	22%	14%	17%	30%	20%	20%
	Agree	62%	69%	71%	65%	60%	66%

Survey question	Answer options*	Activities and Programme Branch	Research and Right to Development Branch	Support Services Branch	Office of the High Commissioner	Administrative and Systems Support Section	OHCHR
Q17: OHCHR is a place where you can develop your professional career	Disagree	56%	49%	43%	43%	50%	49%
	No opinion	20%	17%	26%	39%	30%	24%
	Agree	24%	34%	31%	17%	20%	27%
Q18; You receive adequate guidance in order to develop your career	Disagree	71%	57%	69%	78%	70%	69%
	No opinion	16%	11%	14%	17%	20%	15%
	Agree	13%	31%	17%	4%	10%	17%
Q19: Your current work is consistent with the job description established for your post	Disagree	29%	40%	29%	35%	40%	33%
	No opinion	20%	11%	9%	9%	10%	13%
	Agree	51%	49%	63%	57%	50%	54%
Q20: Your workload is adequate (according and proportional to the resources received)	Disagree	47%	31%	49%	26%	70%	43%
	No opinion	11%	20%	11%	4%	0%	11%
	Agree	42%	49%	40%	70%	30%	46%
Q21: The training you have received at OHCHR is enough to carry out your duties with special consideration to the following areas	(a) Technical training, substantive, specific to the core activities of your job						
	Disagree	27%	40%	26%	30%	30%	30%
	No opinion	33%	40%	23%	43%	10%	33%
	Agree	40%	20%	51%	26%	60%	37%
	(b) Information technologies (software, applications, etc.)						
	Disagree	27%	34%	20%	30%	10%	26%
	No opinion	36%	31%	14%	30%	30%	29%
	Agree	38%	34%	66%	39%	60%	45%
	(c) General competencies (conflict resolution, negotiation skills, etc.)						
	Disagree	29%	26%	23%	30%	20%	27%
	No opinion	27%	43%	29%	39%	30%	33%
	Agree	44%	31%	49%	30%	50%	40%
Q22: Please indicate your position regarding the possibility of having field experience within OHCHR	I have no field experience and no interest in it	7%	20%	11%	9%	30%	13%
	I have no field experience but I would like to have some	20%	26%	51%	26%	30%	30%

Survey question	Answer options*	Activities and Programme Branch	Research and Right to Development Branch	Support Services Branch	Office of the High Commissioner	Administrative and Systems Support Section	OHCHR
	No opinion	9%	23%	9%	22%	20%	15%
	I do have field experience and no interest in having more	11%	14%	6%	22%	0%	11%
	I do have field experience and I would like to have more	53%	17%	23%	22%	20%	31%
Q23: There is a balanced representation of different nationalities among OHCHR staff	Disagree	56%	57%	49%	57%	40%	53%
	No opinion	24%	26%	23%	22%	20%	24%
	Agree	20%	17%	29%	22%	40%	23%
Q24: A different mix of nationalities in the staff would be a significant benefit for OHCHR operations	Disagree	16%	6%	17%	26%	10%	16%
	No opinion	29%	43%	20%	30%	20%	29%
	Agree	56%	51%	63%	43%	70%	55%
Q25: Please rate your overall satisfaction level with your current work (1 being the lowest and 5 the highest)	1 Very low	4%	6%	6%	0%	10%	5%
	2 Low	22%	17%	9%	17%	0%	15%
	3 Average	22%	17%	23%	35%	10%	22%
	4 High	40%	46%	51%	43%	80%	47%
	5 Very high	11%	14%	11%	4%	0%	11%

* The original questionnaire had five possible choices for every question, for ease of reference answers have been grouped together ("strongly agree" has been grouped with the "agree" option, and "strongly disagree" has been grouped with the "disagree" option).

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Items 25, 58 (n) and 107 of the preliminary list*

Security Council
Fifty-ninth year

Implementation of the resolutions of the United Nations

Cooperation between the United Nations and regional and other organizations: cooperation between the United Nations and the Organization for Security and Cooperation in Europe

Right of peoples to self-determination

Letter dated 16 March 2004 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General and the President of the Security Council

I have the honour to submit herewith for your consideration the memorandum on the legal aspects of the conflict in and around the Nagorny Karabakh region of the Republic of Azerbaijan (see annex).

I should be grateful if the present letter and its annex were distributed as a document of the General Assembly, under items 25, 58 (n) and 107 of the preliminary list of items to be included in the provisional agenda of its fifty-ninth session, and of the Security Council.

(*Signed*) Yashar **Aliyev**
Ambassador
Permanent Representative

* A/59/50 and Corr.1.

04-27557 (E) 160404

Annex to the letter dated 16 March 2004 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General and the President of the Security Council

[Original: Russian]

Legal aspects of the conflict in and around the Nagorny Karabakh region of the Republic of Azerbaijan

It can be stated without exaggeration that the conflict in Nagorny Karabakh, which began at the end of the 1980s, has become one of the cruellest conflicts of the late twentieth century in terms of its consequences and duration. The results of this war are well known — tens of thousands of dead and injured, more than a million refugees and displaced persons, several thousand missing. Against a background of failed attempts to find, with the help of mediatory efforts by the international community, a formula for the settlement of the conflict that satisfies both sides, its main military outcome is the occupation of part of the territory of Azerbaijan and the discussions, continuing with varying levels of intensity, concerning the possible status of Nagorny Karabakh.

However, the causes of the conflict, which have their roots in the distant past, are far deeper and more complex than they may appear at first glance. Careful study of the sources of the confrontation will reveal, first and foremost, that the positions of the sides on virtually all the problems that they have in common are diametrically opposed. In particular, each side regards the other as the newcomer in Nagorny Karabakh and considers this territory to have belonged to it since olden days.

Nevertheless, the present analysis deliberately sidesteps many historical aspects of the confrontation, leaving this avenue of inquiry to scholars and historians. While it opts for a legal approach to the problem, it also takes account of the incontrovertible fact that even an unambiguous answer to the question of who first entered the now disputed territory could not seriously affect its legal status. Otherwise, it would be necessary endlessly to redraw existing borders throughout the world. We also wish to emphasize that this approach does not in any way signify that the arguments of one side are weak, nor is it aimed at avoiding future discussion of this and other issues.

There have been frequent attempts to present the conflict in question as the manifestation of contradictions between two principles of international law, namely, the principle of the territorial integrity of States and that of the right of peoples to self-determination. In fact, as the final outcome of the analysis shows, in the case under consideration, the opposition between these principles is artificial. This conclusion is based, first and foremost, on the rules of international law currently in force and the decisions of international organizations with respect to the conflict.

The main legal arguments of the Armenian side, which contests the status of Nagorny Karabakh as a territory of Azerbaijan, are based on assertions concerning the illegality of its transfer to Azerbaijan by Stalin in 1921, alleged discrimination against the Armenian population of Nagorny Karabakh, and the resultant legal grounds for the realization by it of its right of self-determination through secession. Obviously, this approach has two important aims: first, to arouse the sympathy of the international community by citing the "arbitrary decision of an unconstitutional and unauthorized party organ, the Caucasian Bureau of the Central Committee of the

Russian Communist Party (Bolsheviks)";[1] and, second, to secure, initially and as a minimum, understanding and tolerance towards de facto secession of Nagorny Karabakh from Azerbaijan, based on the supposed broad moral support of the public.

As is generally known, the independent Azerbaijani Democratic Republic ceased to exist on 28 April 1920, when, following its invasion by the Bolshevik Eleventh Red Army, the Azerbaijan Soviet Socialist Republic was proclaimed; it was subsequently incorporated in the Union of Soviet Socialist Republics (USSR). Owing to the territorial claims of the Armenian SSR with respect to the Azerbaijan SSR, the Caucasian Bureau did indeed take up the problem and, at a meeting held on 5 July 1921, decided to leave Nagorny Karabakh within the Azerbaijan SSR. At the same time, the Azerbaijan SSR proposed that Nagorny Karabakh should be granted broad autonomy. The following quotation from the operative part of the Caucasian Bureau decision demonstrates that the Bureau decided to leave Nagorny Karabakh within the Azerbaijan SSR, not to transfer it, as the Armenian side insists: "Proceeding from the need for national peace between Muslims and Armenians, the economic ties between upper and lower Karabakh and its constant ties with Azerbaijan, Nagorny Karabakh shall remain within the Azerbaijan SSR, while being granted broad regional autonomy ...[2]

The Decree on the formation of the autonomous region of Nagorny Karabakh was issued on 7 July 1923. It should be noted that the Azeri population living in the territory of Armenia at that time, which was no smaller in number and was compactly settled, was not granted similar rights. According to statistics, in 1918 the number of Azeris in the territory of what is now Armenia was 575,000. However, during the years of Soviet rule in Armenia, the ratio of Armenians to Azeris changed every year at the expense of the latter. A single-minded policy was pursued to that end until the last Azeri had left the territory of Armenia.

In his report entitled "Profiles in displacement: Azerbaijan", the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng, gives the following assessment of the situation with respect to the dispute between the sides over Nagorny Karabakh: "Nagorny Karabakh is a region to which both Azerbaijan and Armenia claim historical ties stretching back centuries. However, the roots of the present conflict can be traced to the early twentieth century. After the Russian revolution, Azerbaijan and Armenia fought as newly independent States over Nagorny Karabakh. The Paris Peace Conference of 1919 recognized Azerbaijan's claim to the territory. After Azerbaijan and Armenia were incorporated in the Soviet Union, this territorial arrangement for Nagorny Karabakh was retained, while Armenia was awarded the district of Zangezur which had connected Azerbaijan to its westernmost region of Nakhichevan."[3]

It is important to note that the Armenian side's territorial claims were not limited to Nagorny Karabakh. Thus, in addition to Zangezur, as a result of back-room deal making in various years of the Soviet Union's existence, Dilizhan, Geicha, several villages in Nakhichevan and lands in the Kedabek and Kazakh districts of Azerbaijan were "peacefully" transferred to the Armenian SSR.

The allegations of discrimination against the Armenian population of Nagorny Karabakh do not stand up to scrutiny.

In accordance with article 86 of the Constitution of the USSR, an autonomous region was part of a Union Republic or Territory. Laws concerning the autonomous region were adopted by the Supreme Soviet of the Union Republic following their submission by the Soviet of People's Deputies of the autonomous region.[4]

Altogether there were eight autonomous regions in the USSR; they are listed in article 87 of the Constitution. Under the provisions of this article, the Nagorny Karabakh Autonomous Region was part of the Azerbaijan SSR.[5]

In accordance with the Constitution of the Azerbaijan SSR, the legal status of the Nagorny Karabakh Autonomous Region was governed by the Act "On the Nagorny Karabakh Autonomous Region", which was adopted by the Supreme Soviet of the Azerbaijan SSR following its submission by the Soviet of People's Deputies of the Nagorny Karabakh Autonomous Region. As a national territorial unit, the region enjoyed a form of administrative autonomy and, accordingly, had a number of rights, which, in practice, ensured that its population's specific needs were met. Under the Constitution of the former USSR (article 110 of the Constitution of the USSR and article 4 of the Act of the Azerbaijan SSR "On the Nagorny Karabakh Autonomous Region" — author), the region was represented by five deputies in the Council of Nationalities of the Supreme Soviet of the USSR. It was represented by 12 deputies in the Supreme Soviet of the Azerbaijan SSR.[6]

Furthermore, under article 113 of the Constitution of the Azerbaijan SSR and article 6 of the Act of the Azerbaijan SSR "On the Nagorny Karabakh Autonomous Region", one of the vice-presidents of the Presidium of the Supreme Soviet of the Azerbaijan SSR was elected from the Nagorny Karabakh Autonomous Region.

The Soviet of People's Deputies of the Nagorny Karabakh Autonomous Region — the government authority in the region — had a wide range of powers. It decided all local issues based on the interests of citizens living in the region and with reference to its national and other specific features. The Soviet of People's Deputies of the Nagorny Karabakh Autonomous Region participated in the discussion of issues relating to the Republic as a whole and made suggestions on them, implemented the decisions of higher government authorities and guided the work of subordinate Soviets. Armenian was used in the work of all government, administrative and judicial bodies and the Procurator's Office, as well as in education, reflecting the language requirements of the majority of the region's population.[7]

In the period 1971 to 1985, 483 million roubles of capital investment were channelled into the development of the Nagorny Karabakh Autonomous Region, 2.8 times more than in the previous 15-year period. Over the preceding 20 years, the volume of per capita capital investment had increased nearly fourfold (226 roubles in 1981-1985 against 59 roubles in 1961-1965). Over the preceding 15 years, per capita housing construction had amounted to 3.64 square metres in Azerbaijan as a whole, whereas for the Nagorny Karabakh Autonomous Region the figure was 4.76 square metres. The number of hospital beds per 10,000 inhabitants was 15 per cent higher than in the rest of the Republic.[8]

Although the Nagorny Karabakh Autonomous Region ranked relatively high among the Republic's regions in terms of the number of pre-school places available, in the period 1971 to 1985 the increase in the number of places in children's institutions per 10,000 inhabitants in the region was 1.4 times the average for the

Republic. The same is true of the increase in the number of places per 10,000 inhabitants in schools providing general education, the Nagorny Karabakh Autonomous Region being ahead by a factor of 1.6.[9]

The fact that provision of housing, goods and services was superior to that in the Republic as a whole was typical of the social and cultural development of the region. Per capita living space in apartment buildings in the region was almost one third greater than the average for the Republic, while rural dwellers had 1.5 times more living space than peasants in the Republic as a whole. The population of the region had access to greater numbers of medium-level medical personnel (1.3 times more) and hospital beds (3 per cent more). There was a more extensive network of institutions providing cultural and information services (more than three times the number of cinemas and clubs and twice as many libraries), and there were 1.6 times more books and magazines per 100 readers. In schools, 7.7 per cent of children in the region attended the second and third sessions, compared with 25 per cent in the Republic as a whole; 37 per cent of children had places in permanent pre-school establishments (against 20 per cent in the Republic).[10]

In fact, the Nagorny Karabakh Autonomous Region was developing more rapidly than Azerbaijan as a whole. For example, whereas industrial output in the Republic increased threefold between 1970 and 1986, in the Nagorny Karabakh Autonomous Region it grew by a factor of 3.3 (the rate of growth there was 8.3 per cent higher). In 1986, 3.1 times more fixed capital assets were brought into use in the region than in 1970; in the Republic the figure was 2.5. As far as basic social development indicators were concerned, the Nagorny Karabakh Autonomous Region exceeded the average Republic-wide standard of living indicators in the Azerbaijan SSR. There was significant progress in the development of cultural establishments, both in the region and throughout the Republic.[11]

Five independent periodicals appeared in the Armenian language. Unlike other administrative territorial units of Azerbaijan located far from the capital of the Republic in mountainous areas, the region was equipped with technical infrastructure for receiving television and radio programmes.

As has been seen above, and as the existence and development of the Nagorny Karabakh Autonomous Region within Azerbaijan confirms, the form of autonomy that had evolved fully reflected the specific economic, social, cultural and national characteristics of the population and the way of life in the autonomous region.[12]

The present conflict between Armenia and Azerbaijan may be regarded as having begun on 20 February 1988, when the regional Soviet of the Nagorny Karabakh Autonomous Region adopted a decision to petition to the Supreme Soviets of the Azerbaijan SSR and the Armenian SSR for the transfer of the Nagorny Karabakh Autonomous Region from the Azerbaijan SSR to the Armenian SSR.

The procedure for changing the borders of Union Republics was stipulated in the constitutions of the USSR and the Union Republics. Thus, under article 78 of the Constitution of the USSR, the territory of a Union Republic could not be changed without its consent. The borders between Union Republics could be changed by mutual agreement between the Republics concerned, subject to approval by the USSR.[13] This provision of the country's Basic Law was also incorporated in the Constitutions of the Azerbaijan SSR and the Armenian SSR.

In response to the decision of the regional Soviet of the Nagorny Karabakh Autonomous Region of 20 February 1988, on 15 June 1988 the Supreme Soviet of the Armenian SSR adopted a resolution agreeing to the incorporation of the Nagorny Karabakh Autonomous Region in the Armenian SSR and requesting the Supreme Soviet of the USSR to consider and approve the transfer of the region from the Azerbaijan SSR to the Armenian SSR.

In resolutions adopted on 13 and 17 June 1988, respectively, the Supreme Soviet of the Azerbaijan SSR and its Presidium, in turn, declared the transfer of the Nagorny Karabakh Autonomous Region from the Azerbaijan SSR to the Armenian SSR to be unacceptable and impossible, based on article 78 of the Constitution of the USSR and article 70 of the Constitution of the Azerbaijan SSR.

It would seem, based on the provisions of the Constitution of the USSR and the Basic Laws of the Azerbaijan SSR and the Armenian SSR then in force, that the issue could have been considered closed, particularly since there were no serious grounds even for discussing the possibility of changing the borders between the Union Republics.

However, on 12 July 1988, the regional Soviet of the Nagorny Karabakh Autonomous Region adopted an illegal decision on the secession of the region from the Azerbaijan SSR. In addition to violating the relevant provisions of the Constitution of the USSR and the Basic Law of the Azerbaijan SSR, this decision also ran counter to article 42 of the Act of the Azerbaijan SSR "On the Nagorny Karabakh Autonomous Region", under which the Soviet of People's Deputies of the Nagorny Karabakh Autonomous Region was able to adopt decisions within the limits of the powers granted to it by the legislation of the USSR and the Azerbaijan SSR. Furthermore, the article in question provided that the Presidium of the Supreme Soviet of the Azerbaijan SSR could annul decisions of regional Soviets if they were not in conformity with the law.[14]

In response, on 13 July 1988 the Presidium of the Supreme Soviet of the Azerbaijan SSR, guided by article 87 of the Constitution of the USSR, article 114 of the Constitution of the Azerbaijan SSR and article 42 of the Act of the Azerbaijan SSR "On the Nagorny Karabakh Autonomous Region", adopted a resolution declaring the decision of the Soviet of People's Deputies of the Nagorny Karabakh Autonomous Region of 12 July 1988 on the unilateral secession of the Nagorny Karabakh Autonomous Region from the Azerbaijan SSR to be illegal and without effect.

The so-called "Congress of plenipotentiary representatives of the population of the Nagorny Karabakh Autonomous Region", held on 16 August 1989, declared unambiguously that it refused to recognize the status of Nagorny Karabakh as an autonomous region of the Azerbaijan SSR. At the same time, the "Congress" proclaimed the region an "independent union territory", in which the Constitution of the Azerbaijan SSR and other laws of the Republic no longer applied. The "Congress" established a "national soviet", which was declared the sole people's authority in the Nagorny Karabakh Autonomous Region.

As was to be expected, the reaction of the Azerbaijani side was not slow in coming. Thus, on 27 August 1989, the Presidium of the Supreme Soviet of the Azerbaijan SSR adopted a resolution declaring the decision of the so-called

"Congress of plenipotentiary representatives of the population of the Nagorny Karabakh Autonomous Region" to be illegal.

Of course, the Armenian SSR also participated actively in the attempts to formalize through legislation the seizure of the Nagorny Karabakh Autonomous Region from the Azerbaijan SSR. In addition to the aforementioned resolution of the Supreme Soviet of the Armenian SSR of 20 February 1988, the highest legislative body of this Union Republic adopted many other anti-constitutional decisions, the best known of which is the resolution on the reunification of the Armenian SSR and Nagorny Karabakh, adopted on 1 December 1989. In this resolution, the Presidium of the Supreme Soviet of the Armenian SSR, the Council of Ministers of the Armenian SSR and the Presidium of the National Soviet of the Nagorny Karabakh Autonomous Region were instructed to take all measures flowing from the resolution to realize the practical merging of the political, economic and cultural structures of the Armenian SSR and Nagorny Karabakh into a single national and political system.

As has already been noted, one of the Armenian side's key arguments for the legality of the demand by Nagorny Karabakh to secede is the region's alleged illegal transfer to Azerbaijan by the decision of the Caucasian Bureau of the Central Committee of the Russian Communist Party (Bolsheviks) of 5 July 1921. It was for precisely this reason that on 13 February 1990 the Supreme Soviet of the Armenian SSR adopted a resolution declaring that decision to be illegal.

Against the background of these and many other decisions of the Armenian Parliament on Nagorny Karabakh, which openly attempted to legalize the unilateral seizure of part of the territory of one Union Republic for the benefit of another and incite the creation of an unconstitutional entity in the territory of another State, the statements now being made by Erevan about the non-involvement of Armenia in the hostilities in the territory of Azerbaijan may cause surprise, to say the least.

Obviously, before Azerbaijan and Armenia gained independence and before the conflict in Nagorny Karabakh was taken up by international organizations, the USSR central authorities played the role of arbitrator. On several occasions, the highest legislative body of the former Soviet Union, the Supreme Soviet, considered and adopted decisions on the situation with respect to the crisis in Nagorny Karabakh. In all of these decisions, including the resolutions of 10 January and 3 March 1990, the Supreme Soviet of the USSR confirmed the sovereignty and territorial integrity of the Azerbaijan SSR and declared the aforementioned decision of the Supreme Soviet of the Armenian SSR to be unconstitutional. These decisions by the highest legislative body of the USSR may be regarded as the beginning of the subsequent complete shunning of Armenia's position on the question of Nagorny Karabakh in the international arena.

The next attempt to legalize the secession of Nagorny Karabakh was made on 2 September 1991, when the "Republic of Nagorny Karabakh" was proclaimed. In the Armenian side's opinion, the basis for the legality of this step is the Act of the former USSR of 3 April 1990 "On the procedure for dealing with matters arising from the secession of a Union Republic from the USSR", which gave autonomous entities and compactly settled nationalities the right to decide for themselves the question of their legal national status. The Armenian side is confident that the establishment of the "Republic of Nagorny Karabakh" was irreproachable from the point of view of standards of international law, since, in its opinion, on the date the

Azerbaijani Republic obtained its recognition, the Republic of Nagorny Karabakh no longer formed part of it.[15]

However, as a simple analysis of these arguments shows, there are serious doubts as to their "irreproachability" precisely from a legal point of view.

For example, the Act "On the procedure for dealing with matters arising from the secession of a Union Republic from the USSR" was based on article 72 of the Constitution of the former USSR, under which each Union Republic had the right to secede from the USSR. The purpose of the Act was thus to regulate mutual relations within the framework of the USSR by establishing a specific procedure to be followed by Union Republics in the event of their secession from the USSR. In particular, a decision by a Union Republic to secede had to be based on the will of the people of the Republic freely expressed through a referendum; a large part of the Act is devoted to the procedure for conducting such a referendum. Of course, article 3 of the Act merits special attention. It provided that a Union Republic containing autonomous republics, regions or areas had to conduct separate referendums in each autonomous entity. This preserved the right of the peoples of the autonomous republics and other autonomous entities to decide independently whether to remain within the USSR or the seceding Union Republic, as well as to raise the issue of their legal national status.

However, given that the Soviet Union had ceased to exist following the well-known Belovezh agreements, this Act was without legal effect, since no Union Republic, including Azerbaijan and Armenia, had used the procedure for secession stipulated in it. Only if Azerbaijan had attempted to secede from the USSR during its existence and had complied with the Act "On the procedure for dealing with matters arising from the secession of a Union Republic from the USSR", would the Nagorny Karabakh Autonomous Region have had the right to conduct a separate referendum to determine where it stood on the three possibilities: remaining within the USSR, seceding together with Azerbaijan, or raising the issue of its legal national status.

The attempt to link this Act and the Declaration on the Restoration of the State Independence of the Azerbaijani Republic, adopted by the Supreme Soviet of the Azerbaijan SSR on 30 August 1991, also fails to stand up to scrutiny. Clearly, this Declaration, which deals not with secession from the USSR but with the restoration of the State independence of 1918 to 1920, was adopted without reference to the procedure for secession stipulated in the Union Act. Thus, if one follows the letter and spirit of the Act of 3 April 1990 to their conclusion, the adoption of the Declaration could not serve, for the Nagorny Karabakh Autonomous Region, as a legal basis for raising the issue of its legal national status under the Act. Moreover, in accordance with the Act, the Declaration also produced no legal effects for the USSR. For paragraph 2 of the Resolution of the Supreme Soviet of the USSR of 3 April 1990 on the application of the Act of the USSR "On the procedure for dealing with matters arising from the secession of a Union Republic from the USSR" stated that "... any actions connected with the raising of the issue of the secession of a Union Republic from the USSR that run counter to the Act of the USSR 'On the procedure for dealing with matters arising from the secession of a Union Republic from the USSR', whether taken before or after its entry into force, shall be without legal effect for both the USSR and the Union Republics".

When considering the issues relating to the Act of the USSR of 3 April 1990, one cannot help noticing another important detail, namely, the reasons for its adoption. Obviously, the need for such a law was dictated by the ever more frequent and insistent calls that were being made for Union Republics to secede from the USSR. On closer acquaintance with the text of this Act, it quite naturally occurs to one that the main purpose of its adoption was not to regulate the procedure for the separation of Union Republics from the USSR, rather it was an attempt to hinder the exercise by them of the right to free secession guaranteed in article 72 of the Constitution of the USSR. This idea is also suggested by the fact that, as well as providing for separate referendums for autonomous republics and other autonomous entities, the Act granted similar rights to national groups that were compactly settled in the territory of a Union Republic and formed the majority of the population in a specific place. It is not difficult to see how an attempt by a Union Republic to secede from the USSR would have ended, assuming it had complied with the procedure stipulated in the Act of 3 April 1990. It is therefore all the stranger to hear this Act being invoked by uncompromising champions of the unrestricted right of peoples to self-determination, since that is precisely what the Act limited.

Moreover, in the opinion of R. Mullerson, the tactic used by the Soviet leadership with the adoption of the controversial Act not only failed to solve the problem of the disintegration of the USSR, but also further exacerbated the situation. The majority of the population began to regard the minority (sometimes rightly, sometimes not) as Kremlin fifth columnists.[16]

In addition, pursuant to the Act of the Supreme Soviet of the Azerbaijani Republic of 26 November 1991, the Nagorny Karabakh Autonomous Region, as a national territorial unit, was abolished. The Decree of the Azerbaijani Central Executive Committee of 7 July 1923 on the formation of the autonomous region of Nagorny Karabakh and the Act of the Azerbaijan SSR of 16 June 1981 "On the Nagorny Karabakh Autonomous Region" were declared null and void. It is worth noting that this decision was motivated, in particular, by the fact that the creation of the Nagorny Karabakh Autonomous Region had contributed to the deepening of the ethnic discord between the Azerbaijani and Armenian peoples.

Thus, Nagorny Karabakh was and has remained part of Azerbaijan, both before and since independence.

On 8 July 1992, the Supreme Soviet of the Republic of Armenia adopted a resolution qualifying as unacceptable to the Republic of Armenia any international or internal document that referred to the "Republic of Nagorny Karabakh" as part of Azerbaijan. However, in international documents, Nagorny Karabakh is referred to as part of Azerbaijan more often than Erevan apparently expected when it adopted the aforementioned resolution. It is precisely this fact that dispels once and for all the illusion that the de jure status of Nagorny Karabakh may some day be changed at the expense of Azerbaijan.

The gaining of independence by Azerbaijan and Armenia, the simultaneous formalization of their participation in the Conference on Security and Cooperation in Europe (CSCE) on 30 January 1992 and their accession to the United Nations on 2 March 1992 mark a new stage in the theoretical debate between the sides, the results of which, while not entirely satisfactory to one side, put an end to the other's hopes of a favourable outcome once and for all.

Viewing the resolutions of the Security Council and the documents of the Organization on Security and Cooperation in Europe (OSCE) on the conflict in Nagorny Karabakh through the prism of the principles and rules of international law, it can be stated with certainty that there are no grounds whatsoever for citing, in this instance, the problem of the conflict that allegedly exists between the principles of territorial integrity and the right of peoples to self-determination. In any event, one forms the impression that, in the case under consideration, one of these principles is being artificially linked to the other.

In the Charter of the United Nations, there are two references to the principle of equal rights and self-determination of peoples. Thus, in accordance with Article 1, paragraph 2, of the Charter, one of the purposes of the United Nations is to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples. In Article 55 of the Charter, this principle is regarded as the basis of international economic and social cooperation. It is worth noting that, from the very beginning, the principle of equal rights and self-determination of peoples was understood in the Charter to mean the right to self-determination, not secession.

The principle of self-determination was developed and given a far broader interpretation with the adoption, on 14 December 1960, of the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)), article 2 of which states that: "All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".[17] At the same time, article 6 of the Declaration contains an important restrictive provision, in accordance with which "any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations".[18]

The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights were adopted in 1966. Article 1 of each instrument contains analogous provisions on the right to self-determination: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."[19] The inclusion of these provisions in the most important international instruments gave impetus to a broad discussion in the course of which this collective right came to be seen virtually as the basis of all other human rights, a development which could not but influence the actual political processes occurring in the world.

The next important stage in the development and interpretation of the principle of the right of peoples to self-determination was the adoption by the General Assembly in 1970 of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)). The section on the principle of equal rights and self-determination of peoples states that "all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter".[20]

However, it also contains important restrictive provisions. First, it states that "every State has the duty to promote through joint and separate action universal

respect for and observance of human rights and fundamental freedoms in accordance with the Charter".[21]

Second, it provides a short but nevertheless fairly clear list of the modes of implementing the right to self-determination, such as "the establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people".[22]

Third, the Declaration not only confirms the crucial requirement to refrain from any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States, but also specifies conditions that, if observed, essentially limit the right to self-determination itself, the realization of which may not entail the dismemberment of a State or the violation of the territorial integrity or political unity of a State. The most important of these conditions is the presence of a "government representing the whole people belonging to the territory without distinction as to race, creed or colour".[23]

The Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights (Vienna, 1993), reaffirms that all peoples have the right to self-determination and that by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. While it essentially reiterates earlier sources of international law on this issue, the Vienna Declaration does nevertheless make a fairly important contribution, in article 2, paragraph 2, to the discussion on the most complex and contradictory issue, namely, the subjects of the right to self-determination: "Taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, the World Conference on Human Rights recognizes the right of peoples to take any legitimate action, in accordance with the Charter of the United Nations, to realize their inalienable right of self-determination. The World Conference on Human Rights considers the denial of the right of self-determination as a violation of human rights and underlines the importance of the effective realization of this right".[24]

Article 2, paragraph 2, of the Vienna Declaration also reiterates an important restrictive provision from the Declaration on the Principles of International Law, whereby the right to self-determination must not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind.

In the opinion of Asbjørn Eide, member of the Subcommission on the Promotion and Protection of Human Rights, the word "peoples" in this provision means any population living in a Non-Self-Governing Territory or an occupied territory.[25]

As Eide noted in his report entitled "Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities": "The controversy over the understanding of 'people' as beneficiaries of the 'right to self-determination' had, prior to the 1993 Vienna Declaration and Programme of Action,

become heightened. It had been further complicated by the increasingly numerous understandings sought to be given to the content of self-determination.

"In interpreting the quoted text from the Vienna Declaration in relation to groups living within the territory of sovereign States, the following observations can be made.

"The sovereign State should 'possess a Government representing the whole people belonging to the territory without distinction of any kind'.

"The word 'people' obviously means the whole people, the 'demos', not the separate 'ethnoses' or religious groups."[26]

In the opinion of R. Mullerson, it would be wrong to maintain, as is sometimes done, that minorities do not have the right to self-determination. It would be more correct to state that they realize the right to self-determination together with the rest of the population of the State concerned, as part of that population.[27]

The principle of self-determination of peoples is also referred to in CSCE/OSCE documents. For example, the Helsinki Final Act of 1975 states the following: "The participating States will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States.

"By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development.

"The participating States reaffirm the universal significance of respect for and effective exercise of equal rights and self-determination of peoples for the development of friendly relations among themselves as among all States; they also recall the importance of the elimination of any form of violation of this principle."

In later documents, however, the participating States, bearing in mind the changed international situation and the existence of armed conflicts in their own territories, place greater emphasis on respecting the territorial integrity of States when defining the principle of self-determination. This approach is clearly apparent in the Charter of Paris for a New Europe of 1990 and in the document of the Moscow meeting of the Conference on the Human Dimension adopted in the following year. The Charter of Paris states the following: "We reaffirm the equal rights of peoples and their right to self-determination in conformity with the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States." In the document of the Moscow conference "the participating States underlined that, in accordance with the Final Act of the Conference on Security and Cooperation in Europe and the Charter of Paris for a New Europe, the equal rights of peoples and their right to self-determination are to be respected in conformity with the Charter of the United Nations and the relevant norms of international law, including those relating to territorial integrity of States".

Thus, with the exception of two cases: non-self-governing territories and territories under illegal occupation, as defined by the United Nations, the right to self-determination does not include the unilateral right to independence or secession.

It should be stressed, however, that the right to self-determination belongs to peoples living in territories which underwent foreign occupation after the adoption of the Charter of the United Nations in 1945. In relation to the question of the subjects of the right to self-determination, federations formed as a result of the voluntary unification of republics should also be included, when there are clear provisions in their respective constitutions indicating that the republics have the right to withdraw from such federations.[28] This point is very important when considering the conflict in and around Nagorny Karabakh, which, as is well known, does not fall under any of the criteria mentioned.

Nevertheless, despite the apparently fairly clear restriction under international law on the application of the right to self-determination, it should be recognized that the greatest problems may arise in the following two cases: rejection of pluralism, resulting from the implementation by a sovereign State of a rigid and discriminatory policy in relation to a national or ethnic minority living in its territory, and also the case of a minority which, incited by external forces, mainly the "mother country", refuses to remain within a larger formation, even when the sovereign State is prepared to take far-reaching steps to achieve pluralism.[29]

A typical situation arises in cases when a particular group which is living compactly in a certain geographical district or enclave within a State whose majority population belongs to another ethnic group claims that it is not a minority, but a people, and demands self-determination through secession or alteration of borders. It is up to such national or ethnic groups to demonstrate that they have the right to secession under international law. If this cannot be convincingly demonstrated to the international community, foreign States cannot have the right to encourage or support efforts to achieve self-determination.[30]

Asbjørn Eide believes that attention should be paid not only to the politics of the dominant majority of the population or the State, but also to the politics of minority groups. Some of them support ethnic nationalism just as ardently, if not even more so, than the majority population of the State in which they live. If they pursue a policy of ethnic nationalism, they are likely to demand self-determination and to seek so-called "cleansing", removing members of other ethnic groups living in their region in order to achieve a "pure" ethnic composition, or they may try to review borders so as to become part of a neighbouring State, the majority population of which belongs to the same ethnic group.[31]

Eide goes on to say that finding constructive solutions depends on all the parties involved. There is a widespread misconception that only Governments or the majority population are responsible for existing situations, and that they alone can make changes. However, even a superficial review of the current situation in the world shows the existence of a number of minorities which are pursuing an extremely provocative and violent policy. Sometimes they assume that, in the worst case, if their provocative actions lead to large-scale military conflict with the majority population, threatening the very basis of their existence, some external power will come to their assistance, either the "mother country" or some other external entity. This type of policy is dangerous.[32]

It is interesting that these views have a great deal of relevance to the situation in the Nagorny Karabakh conflict, with the only difference that Armenia's role as the "mother country" is crucial in the armed confrontation with Azerbaijan. Moreover, in its approach Armenia effectively leaves no room for pluralism. When

one considers the demand for independence for the Armenians of Nagorny Karabakh, with simultaneous "cleansing" of the territory of their own country, and also of that of Nagorny Karabakh itself, from Azerbaijanis, the natural conclusion is that Armenia regards the possibility of resolving the problem of self-determination at only two levels — through unilateral secession or through "ethnic cleansing".

In 1992, the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities was adopted; article 8, paragraph 4 states that "nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States".[33]

As noted in the commentary to the Declaration, prepared by Asbjørn Eide, "the rights of persons belonging to minorities differ from the rights of peoples to self-determination. While the latter right is well established under international law, in particular common article 1 to the two International Covenants on Human Rights, the scope of the right and the meaning of the concepts of 'people' and 'self-determination' is still ambiguous and highly controversial. This point has no impact on the Minority Declaration, since there is no disagreement that rights of persons belonging to minorities are individual rights, even if they in most cases can only be enjoyed in community with others. The rights of peoples, on the other hand, are collective rights".[34]

The question of distinguishing between the rights of persons belonging to minorities and the right of peoples to self-determination is further developed in the commentary to article 8, paragraph 4 of the Declaration. In particular, the author stresses that "minority rights cannot serve as a basis for claims of secession or dismemberment of the State".[35]

This question is also addressed in General Comment No. 23 (50), adopted by the United Nations Human Rights Committee in 1994. The Committee, inter alia, noted that "in some communications submitted to the Committee under the Optional Protocol, the right protected under article 27 has been confused with the right of peoples to self-determination proclaimed in article 1 of the Covenant". In this connection, the Committee stressed that "the Covenant draws a distinction between the right to self-determination and the rights protected under article 27. The former is expressed to be a right belonging to peoples and is dealt with in a separate part (Part I) of the Covenant. Self-determination is not a right cognizable under the Optional Protocol. Article 27, on the other hand, relates to rights conferred on individuals as such and is included, like the articles relating to other personal rights conferred on individuals, in Part III of the Covenant and is cognizable under the Optional Protocol".[36]

Reflecting the growing concern of the international community about the unjustified, widely advocated tendency to interpret the right to self-determination as a right of any national or ethnic group to secession, the Secretary-General of the United Nations, in the "Agenda for Peace", observed that "if every ethnic, religious or linguistic group claimed statehood, there would be no limit to fragmentation, and peace, security and economic well-being for all would become even more difficult to achieve ... The sovereignty, territorial integrity and independence of States within the established international system, and the principle of self-determination for

peoples, both of great value and importance, must not be permitted to work against each other".[37]

The obligations of minorities in relation to the State and society have also been reflected in the Convention on the Protection of the Rights of Persons belonging to National Minorities, of the Commonwealth of Independent States (CIS), and the Framework Convention of the Council of Europe for the Protection of National Minorities, adopted in 1994 and 1995 respectively. Thus, under article 12 of the CIS Convention, no obligation of the Contracting Parties arising from the Convention may be interpreted as the basis for any activity or actions which are incompatible with the generally recognized principles and norms of international law, including the principles of respect for sovereign equality, territorial integrity and political independence of States.

Further, in exercising the rights set forth in the Convention, persons belonging to national minorities must comply with the legislation of the State of residence, and also respect the rights and freedoms of other persons.

Article 20 of the framework Convention of the Council of Europe states that "in the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities".

And in the next article: "Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States".[38]

It is interesting that in the Council of Europe commentary to article 20 of the framework Convention, reference is made to situations where persons belonging to national minorities are in a minority nationally but form a majority within one area of the State.[39]

As to the correlation between the principles of the territorial integrity of States and the right of peoples to self-determination in the context of secession, there is a well-established view that the right to self-determination is secondary, on condition that the State observes the principle of equal rights and self-determination of the peoples and has a government which includes representatives of the entire population, without any distinctions on grounds of race, creed or skin colour.

The right to self-determination in the context of human rights is envisaged in General Recommendation XXI (48) adopted by the Committee on the Elimination of Racial Discrimination in 1996. The Committee, inter alia, considering that "the implementation of the principle of self-determination requires every State to promote, through joint and separate action, universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations" draws the attention of Governments to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.[40]

In the Committee's view, "in respect of the self-determination of peoples two aspects have to be distinguished. The right to self-determination of peoples has an internal aspect, that is to say, the rights of all peoples to pursue freely their

economic, social and cultural development without outside interference. In that respect there exists a link with the right of every citizen to take part in the conduct of public affairs at any level, as referred to in article 5 (c) of the International Convention on the Elimination of All Forms of Racial Discrimination. In consequence, Governments are to represent the whole population without distinction as to race, colour, descent or national or ethnic origin. The external aspect of self-determination implies that all peoples have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination and exploitation".[41]

At the same time, the Committee expressed the view that "international law has not recognized a general right of peoples to unilaterally declare secession from a State".[42]

The Conference of independent experts and jurists from member countries of CIS, held in Moscow, reached almost the same conclusion on the problem of self-determination and secession in contemporary international law, noting, in particular, that the right to secession is not an essential element of the right to self-determination, and that it exists outside the framework of the right to self-determination. Moreover, the Conference emphatically held that the right to secession does not extend to national, ethnic, linguistic and religious minorities or any other groups of the population.

A somewhat different approach was taken by Y. Reshetov, a member of the Committee on the Elimination of Racial Discrimination, who in his draft Convention on the right of peoples to self-determination takes the view that the establishment of a sovereign and independent State by a national or ethnic group or its free association with an independent State, or integration with it, may be the result of peace agreements between various national or ethnic groups within a given State.

He goes on to observe that the right to secession by a national or ethnic group, and consequently, the establishment by that group of a sovereign and independent State or its free association with an independent state, or integration with it, may be enshrined in the constitutions of States and achieved in accordance with the relevant procedures of these States and with the norms of international law.

In his view, if a Government, on a non-discriminatory basis and while observing basic human rights and freedoms, allows all its population to participate in the political and public life of the State, any attempts to dismember the State and undermine its territorial integrity and political unity are illegal. At the same time, it is important to note that both the Conference of independent experts and jurists, and Y. A. Reshetov, reach the same conclusion, that a State established in violation of the principle of equal rights and self-determination of peoples must not be recognized as a subject of international law.

A similar approach is taken by M. Mahmoud, who observes that "a regime not fulfilling the right of self-determination is not legal and the thing it proclaims is not a state in the sense of modern international law, due to the lack of the element of legality and due to the lack of a legal territory on which the proclaimed state can exercise its sovereignty. This proclaimed so-called state is a "fabricated state".[43]

The question may arise as to what to do in the event that a group claims that a particular Government does not represent the entire population and is pursuing a discriminatory policy against that group.

In the opinion of A. Eide, "If members of a group living either compactly in an administrative unit of a State or dispersed within the territory of a sovereign State claim that the State is not possessed of a Government representing the whole people without distinction, this claim can be examined at the international level, either by the Committee on the Elimination of Racial Discrimination (CERD) in connection with its examination of the State's report, since discrimination in political rights on ethnic grounds is covered by the Convention on the Elimination of Racial Discrimination, article 5, or by the Human Rights Committee. If the State is a member of the Council of Europe, it could also be addressed under article 14 of the European Convention on Human Rights in conjunction with Protocol 1. In such cases, the remedy will have to be that the discrimination is brought to an end and that the Government is truly representative, by allowing for participation in the political process on a basis of equality of all members of the group.

"Only if the representatives of the group concerned can prove, beyond reasonable doubt, that there is no prospect within the foreseeable future that the Government will become representative of the whole people, can it be entitled to demand and to receive support for a quest for independence. If it can be shown that the majority of the population is pursuing a policy of genocide against the group, this must be seen as very strong support for the claim of independence. The mere fact of there being ethnic violence between the majority and minority does not prove that there is an intent to destroy the group as such, in whole or in part. Even if there was, it would still have to be shown that the majority side was more responsible than the minority for the acts of violence taking place."[44]

This position is also shared by the author of the aforementioned draft Convention on the right of peoples to self-determination, which considers that a refusal by the Governments concerned to implement the recommendations of international organs in connection with the claims of national or ethnic groups that those Governments are not representative of all the peoples in their territory and do not allow their population to participate in the political and public life of the State may be considered proof of their unwillingness to grant that national or ethnic group the right to participate in the political and public life.

Nevertheless, it should be acknowledged that, at the present time, in the absence of a clear international legal basis for the consideration of the claims of national or ethnic groups, the recommendations of the human rights treaty bodies may serve only as a means of exerting the appropriate influence on a Government and not as a method of deciding territorial problems.

There is no doubt that when international organizations have considered and taken decisions on the Nagorny Karabakh conflict, they have taken into account primarily the aforementioned norms of international law on the right of peoples to self-determination and the rights of individuals belonging to minorities and the correlation between these rights and the principle of the territorial integrity of States.

The escalation of the armed conflict in 1993 led to the consideration of the problem by the United Nations Security Council, which adopted four resolutions:

822 (1993) of 30 April 1993; 853 (1993) of 29 July 1993; 874 (1993) of 14 October 1993; and 884 (1993) of 12 November 1993, which may be fully characterized as historical from the standpoint of their legal consequences. The reaffirmation in the resolutions of respect for the sovereignty and territorial integrity of the Azerbaijani Republic, taking into account the use of the wording "the Nagorny Karabakh region of the Azerbaijani Republic", which is also regularly included in the annual resolutions adopted by the United Nations General Assembly on Cooperation between the United Nations and the Organization for Security and Cooperation in Europe, makes all the preceding and subsequent disputes over which State Nagorny Karabakh is part of and the false illusions concerning the right of its population to self-determination in the context of secession completely senseless.

It may be stated with confidence that, taking into account the affirmation by the United Nations Security Council, in its resolutions concerning the Nagorny Karabakh conflict, of the inviolability of international frontiers, the inadmissibility of the use of force to acquire territory and the condemnation of the seizure of territory belonging to the Republic of Azerbaijan, the actions of the other side can only be regarded as a violation of the well-known provisions of the Charter of the United Nations.

The relevant decisions taken by CSCE/OSCE provide the legal foundation and the mechanism for the existing negotiating process for the settlement of the Nagorny Karabakh conflict on the basis of the aforementioned resolutions of the United Nations Security Council.

At the Helsinki Follow-up Meeting of the Council of CSCE in 1992, the Ministers for Foreign Affairs of the CSCE countries expressed deep concern about the continuing escalation of the armed conflict in and around Nagorny Karabakh and requested the Chairman-in-Office of the Council of CSCE to convene, as soon as possible, a conference on Nagorny Karabakh in Minsk under the auspices of CSCE.

At the Summit Meeting of CSCE held in the capital of Hungary in 1994, adherence to the relevant resolutions of the United Nations Security Council was reaffirmed and a decision was taken that CSCE should be more active in dealing with the Nagorny Karabakh conflict. At the same time, the Heads of State and Government requested the Chairman-in-Office of CSCE to appoint the co-chairmen of the Minsk Conference in order to create a unified and agreed basis for negotiations and to ensure full coordination of all mediation and negotiating activities. The Heads of State and Government also declared their political willingness to make available multinational CSCE peacekeeping forces after the parties had reached a political agreement on the cessation of the armed conflict.

However, from the standpoint of the theoretical discussion on the question of the applicability of the principle of the right of peoples to self-determination in the context of secession on the settlement of the Nagorny Karabakh conflict, the results of the OSCE Summit Meeting held in Lisbon in 1996 were very significant. Annexes 1 and 2 to the 1996 Lisbon document, containing the relevant statement of the Chairman-in-Office of OSCE and the statement of the delegation of Armenia in reply, merit special attention.

In his statement, the Chairman-in-Office of OSCE stated the following: "You all know that no progress has been achieved in the last two years to resolve the Nagorno-Karabakh conflict and the issue of the territorial integrity of the Republic

of Azerbaijan. I regret that the efforts of the Co-Chairmen of the Minsk Conference to reconcile the views of the parties on the principles for a settlement have been unsuccessful.

"Three principles which should form part of the settlement of the Nagorno-Karabakh conflict were recommended by the Co-Chairmen of the Minsk Group. These principles are supported by all Member States of the Minsk Group. They are:

- territorial integrity of the Republic of Armenia and the Azerbaijan Republic;
- legal status of Nagorno-Karabakh defined in an agreement based on self-determination which confers on Nagorno-Karabakh the highest degree of self-rule within Azerbaijan;
- guaranteed security for Nagorno-Karabakh and its whole population, including mutual obligations to ensure compliance by all the Parties with the provisions of the settlement.

"I regret that one participating State could not accept this. These principles have the support of all other participating States.

"This statement will be included in the Lisbon Summit documents."[45]

In its statement in reply, the delegation of Armenia, expressing its disagreement with the aforementioned principles for a settlement, stated that "a solution of the problem can be found on the basis of international law and the principles laid down in the Helsinki Final Act, above all on the basis of the principle of self-determination".[46] Thus, the Armenian side, as usual, demonstrated that the opinion of the international community did not coincide with its own understanding and interpretation of the principles and standards of international law.

The position stated by Armenia at the Lisbon Summit, which did not allow for the cessation of the war that has lasted for many years, is not the only example of its disregard for the opinion of the majority.

Two years prior to the Lisbon Summit, Armenia was the only State which did not sign the Declaration on the maintenance of the sovereignty, territorial integrity and inviolability of the frontiers of States members of the Commonwealth of Independent States.

On the signing in 1995 by the Heads of State of CIS of the Memorandum on the maintenance of peace and stability in the Commonwealth of Independent States, Armenia declared that it did not accept paragraphs 7 and 8 of the document as applying to it. These paragraphs read as follows:

"7. The States members of the Commonwealth shall, in their territory and in accordance with their national legislation and international standards, take measures to put a stop to any manifestation of separatism, nationalism, chauvinism and fascism.

"They shall promote the dissemination of objective information about the social and political processes in the other States members of the Commonwealth.

"8. The States bind themselves not to support separatist movements and separatist regimes in the territory of other States members if they arise; not to establish political, economic and other relations with them; not to allow them to use

the territory and communications of other States members of the Commonwealth; and not to offer them economic, financial, military or other assistance."

A result of the subsequent advancement by Armenia of its own interpretation of the principle of the right of peoples to self-determination was its introduction within the Commonwealth of Independent States of a draft Declaration on equal rights and the right of peoples to self-determination, prepared, as anyone familiar with the text could easily see, on the basis of a specific problem — the Nagorny Karabakh conflict. Despite the recognition in the preamble to the draft that "the consistent implementation of the principle of equal rights and the right of peoples to self-determination have allowed all members of the Commonwealth to declare themselves Independent Sovereign States", in the operative part the sponsors, in essence contradicting themselves, included provisions concerning the right of each people to "raise the question of its self-determination up to the point of secession and the formation of an independent State, or secession with a view to becoming part of another State", and the obligation of a State to "take effective measures to prevent and put a stop to any violent actions to retain a people within the frontiers of that State". No comment is necessary also concerning the following article of the draft Declaration: "The violent retention of a people within a State, despite its expressed wish — a wish expressed also in the press and at public meetings or in referendums — is a direct violation of the fundamental purposes and principles of the Charter of the United Nations". Despite the substantive changes made to the text by the sponsors, the draft Declaration was unanimously rejected by experts of the CIS countries who met twice in Minsk to consider Armenia's proposal.

The issue of the conflict between Armenia and Azerbaijan was the subject of consideration also by the Council of Europe. In 1997, the Parliamentary Assembly of the Council of Europe adopted resolution 1119 (1997) "On conflicts in Transcaucasia", in which it declared that the political settlement of the conflict in Nagorny Karabakh should be the subject of negotiations between the parties taking into account, in particular, the principles of the inviolability of frontiers and the broad status of self-rule for Nagorny Karabakh.

Thus, even if one agreed with the aforementioned opinion that only if the representatives of the group concerned can prove, beyond reasonable doubt, that there is no prospect within the foreseeable future that the Government will become representative of the whole people, can it be entitled to demand and to receive support for a quest for independence, as the results of the consideration of the Nagorny Karabakh conflict in international organizations show, the Armenian side has not succeeded in convincing the international community of the validity of its claims and proving that the other side bears the greater responsibility for the acts of violence.

It is, of course, quite natural that the question should arise as to how, in the end, the conflict can be settled. In order to answer this question, it is essential, first of all, to recognize that "The State should be the common home for all parts of its resident population under conditions of equality, with separate group identities being preserved for those who want it under conditions making it possible to develop those identities. Neither majorities nor minorities should be entitled to assert their identity in ways which deny the possibility for others to do the same, or which lead to discrimination against others in the common domain."[47]

The settlement of the conflict should therefore be based primarily on the restoration and strict maintenance of the territorial integrity of Azerbaijan and the preservation and encouragement of the identity of the Armenian minority living in its territory.

At the present time, there are various opinions as to whether groups are entitled to some measure of local self-government or autonomy within a State on the basis of the right to self-determination. In the case in question, it is important to bear in mind that, as indicated above, the rights of individuals belonging to minorities are individual rights, while the right of a people to self-determination is a collective right. Taking this into account, international law does not include specific mandatory provisions recognizing the right of individuals belonging to minorities to self-determination or autonomy.

In this connection, the discussion on the draft additional protocol to the European Convention on Human Rights recommended by the Parliamentary Assembly of the Council of Europe (recommendation 1201 (1993)) is interesting. Article 11 of the draft contains a provision stating that "in the regions where they are in a majority the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the state". In connection with the considerable differences of opinion in the approach to the subject matter of article 11 of the draft, the Venice Commission on Democracy through Law was asked for its opinion and the Commission emphasized in its commentaries, inter alia, that "international law cannot in principle impose on States any territorial settlement of a problem of minorities and that the State in principle is not required to afford minorities any form of decentralization".[48]

Nevertheless, there is no doubt that some forms of territorial division may in certain cases be a practical means of ensuring the existence of a national identity or ethnic group. On the basis of that approach, the Azerbaijani side has repeatedly and at the highest level expressed its willingness to confer on Nagorny Karabakh the highest degree of self-rule within Azerbaijan. This view was, in turn, as noted above, expressed in the statement of the Chairman-in-Office of OSCE at the Summit Meeting of the Organization in Lisbon.

There are in international practice sufficient examples of agreements of territorial division which could be used to work out the substantive part of the status of autonomy for Nagorny Karabakh. It would, of course, hardly be possible to copy one hundred per cent any one of the models existing in the world for the case in question. However, it appears that, in the event of agreement being reached on the main problem — the status of the territory in contention — the search for mutually acceptable ways of achieving a return to a peaceful life should not encounter serious obstacles. Obviously, attempts to impose any decision which is not consistent with respect for the principle of the territorial integrity of Azerbaijan will lead to still further delays in the settlement of the conflict and, accordingly, to the postponement for an indefinite period of time of the attainment of the social and economic well-being of the people of the region.

To sum up the analysis concerning one of the conflict situations in the world, it appears quite natural to conclude that the solution to the problem of minorities cannot, and must not, be the creation for each ethnic group of its own "pure" State

or semi-State. The main reason why this threat is inadmissible must be that States should not be divided, but should be strengthened and that the influence of international institutes in the universal defence and encouragement of human rights should be reinforced.

Notes

[1] Initial report of Armenia submitted under article 40 of the International Covenant on Civil and Political Rights (CCPR/C/92/Add.2), p. 6.

[2] *K istorii obrazovania Nagorno-Karabakhskoy avtonomnoy oblasti Azerbaijanskoy SSR. Dokumenty i materialy. Iz protokola zasedania plenuma Kavbyuro TK RKP (B)* (On the history of the establishment of the Nagorny Karabakh Autonomous Region of the Azerbaijan SSR. Documents and materials. From the minutes of the plenum of the Caucasian Bureau of the Central Committee of the Russian Communist Party (Bolsheviks)) (Baku, 1989), p. 92.

[3] Report of the Representative of the Secretary-General on Internally Displaced Persons Mr. Francis Deng entitled "Profiles in displacement: Azerbaijan" (E/CN.4/1999/79/Add.1), pp. 7-8.

[4] Constitution of the USSR, chap. 11 "The autonomous region and the autonomous area", art. 86. (Moscow, 1977), p. 13.

[5] Ibid., art. 87, p. 13.

[6] Second report of Azerbaijan submitted under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/350/Add.1), p. 7.

[7] Ibid.

[8] Ibid.

[9] Ibid., p. 8.

[10] Ibid.

[11] Ibid.

[12] Ibid.

[13] Constitution of the USSR, chap. 9 "Union of Soviet Socialist Republics", art. 78 (Moscow, 1977), p. 13.

[14] Act of the Azerbaijan SSR "On the Nagorny Karabakh Autonomous Region", chap. 2 "Soviet of People's Deputies of the Nagorny Karabakh Autonomous Region", art. 42 (Baku, 1987), pp. 38-39.

[15] Initial report of Armenia submitted under article 40 of the International Covenant on Civil and Political Rights (CCPR/C/1992/Add.2), p. 8.

[16] R. Mullerson, *Self-determination. Right to secession or entitlement to democracy?* (London and New York, 1994), p. 63.

[17] *Human Rights — A Compilation of International Instruments* (United Nations publication, Sales No. E.93.XIV.1 (Vol. I, Part 1)), p. 56.

[18] Ibid., p. 57.

[19] Ibid., pp. 8 and 20.

[20] *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 28* (A/8028), p. 123.

[21] Y. A. Reshetov, "Pravo na samoopredelenie i otdelenie" (The right to self-determination and secession), *Moskovsky zhurnal mezhdunarodnogo prava*, No. 1 (Moscow, 1994), p. 9.

[22] Ibid., pp. 9-10.

[23] Ibid., p. 11.

[24] Vienna Declaration and Programme of Action (A/CONF.157/23), p. 4.

[25] UniDem seminar on local self-government, territorial integrity and protection of minorities, Lausanne, 25-27 April 1996 (Council of Europe, 1996), p. 283.

[26] E/CN.4/Sub.2/1993/34, pp. 17-18.

[27] R. Mullerson, op. cit., p. 73.

[28] E/CN.4/Sub.2/1992/37.

[29] Ibid.

[30] Ibid.

[31] Ibid.

[32] Ibid.

[33] *Human Rights — A compilation of International Instruments* (United Nations publication, Sales No. E.93.XIV.1 (Vol. I, Part I)) p. 143.

[34] E/CN.4/Sub.2/AC.5/2000/WP.1, p. 3.

[35] Ibid., p. 18.

[36] CCPR/C/21/Rev.1/Add.5, p. 2.

[37] An agenda for peace. Cited in E/CN.4/Sub.2/1993/34, p. 18.

[38] Council of Europe document N (95) 010.

[39] Ibid., p. 27.

[40] A/51/18 — report of the Committee on the Elimination of Racial Discrimination, p. 125.

[41] Ibid.

[42] Ibid.

[43] Cited in Nii Lante Wallace-Brown. *Claims to statehood in international law*. New York, 1992. p. 69.

[44] E/CN.4/Sub.2/1993/34, para.84.

[45] OSCE Doc.S/1/96, p. 7.

[46] Ibid.

[47] E/CN.4/Sub.2/1993/34/Add.4, para.1.

[48] Annual report of the Venice Commission, 1996.

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Scale of assessments for the apportionment of the expenses of the United Nations

Multi-year payment plans

Report of the Secretary-General

Summary

In its resolution 57/4 B, the General Assembly endorsed the conclusions and recommendations of the Committee on Contributions concerning multi-year payment plans and, in its resolution 58/1 B, the Assembly reaffirmed that endorsement. In this connection, the Committee recommended that the Secretary-General be requested to provide information on the submission of such plans to the Assembly, through the Committee on Contributions. It also recommended that the Secretary-General be requested to submit an annual report to the Assembly, through the Committee on Contributions, on the status of Member States' payment plans at 31 December each year. The present report is submitted in compliance with those requests and provides information on payment plans/schedules submitted by Georgia, the Niger, the Republic of Moldova, Sao Tome and Principe and Tajikistan and on the status of implementation of those plans at 31 December 2003.

The General Assembly may wish to take note of the report and encourage Member States with significant arrears of contributions to consider submitting a multi-year payment plan.

* A/59/50 and Corr.1.

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I. Introduction

1. In its resolution 56/243 A of 24 December 2001, the General Assembly, inter alia, recognized that multi-year payment plans, subject to careful formulation, could be helpful in allowing Member States to demonstrate their commitment under Article 19 of the Charter to pay their arrears, thereby facilitating consideration of applications for exemption by the Committee on Contributions, and requested the Secretary-General to propose guidelines for such multi-year payment plans through the Committee on Contributions.

2. After considering the report of the Secretary-General on multi-year payment plans (A/57/65) at its sixty-second session in 2002,[1] the Committee on Contributions agreed that Member States should be encouraged to submit such plans, which constitute a useful tool for reducing their unpaid assessed contributions and a way for them to demonstrate their commitment to meeting their financial obligations to the United Nations. The Committee recognized in that regard that due consideration should be given to the economic position of Member States, as not all of them might be in a position to submit such plans. It recommended that multi-year payment plans should remain voluntary and should not be automatically linked to other measures.

3. The Committee also recommended that Member States considering a multi-year payment plan should submit the plan to the Secretary-General for the information of other Member States and should be encouraged to consult the Secretariat for advice in its preparation. In that context, it was suggested that:

(a) The plans should provide for payment each year of the Member State's current year assessments and a part of its arrears;

(b) Where possible, the plans should generally provide for elimination of a Member State's arrears within a period of up to six years.

4. The Committee further recommended that the Secretary-General should be requested to provide information on the submission of such plans to the General Assembly, through the Committee on Contributions. It recommended that the Secretary-General should also be requested to submit an annual report to the Assembly, through the Committee on Contributions, on the status of Member States' payment plans at 31 December each year.

5. The Committee also recommended that, for those Member States that are in a position to submit a payment plan, the Committee on Contributions and the General Assembly should take the submission of a plan and its status of implementation into account as one factor when they consider requests for exemption under Article 19.

6. In paragraph 1 of its resolution 57/4 B of 20 December 2002, the General Assembly endorsed the conclusions and recommendations contained in paragraphs 17 to 23 of the aforementioned report of the Committee on Contributions on its sixty-second session. In its resolution 58/1 B of 23 December 2003, the Assembly reaffirmed paragraph 1 of its resolution 57/4 B. The first annual report on multi-year payment plans (A/58/63) was considered by the Assembly at its fifty-eighth session.

II. Submission of multi-year payment plans

7. Since the issue of the aforementioned first annual report, Georgia submitted a revised payment plan, as indicated in the report of the Committee on Contributions on its sixty-third session,[2] and the Niger sent a new proposal on 22 March 2004. Other payment plans/schedules had been submitted earlier by the Republic of Moldova, Sao Tome and Principe and Tajikistan. In the announcement concerning the sixty-fourth session of the Committee on Contributions, to be included in the Journal of the United Nations from 1 March to 24 May 2004, the Secretariat has invited Member States considering the submission of a multi-year payment plan to contact the Secretariat for further information. Should any other payment plans be submitted in future, related information will be provided in an addendum to the present report or in the report to be submitted to the General Assembly at its sixtieth session.

8. The most recent plan submitted by the Republic of Moldova is within the six-year time frame mentioned by the Committee, while those submitted by Georgia, the Niger, Sao Tome and Principe and Tajikistan have durations of 10, 9, 8 and 11 years, respectively. For the purposes of the present report, payments are taken to include cash payments by the Member States concerned, together with the application of any credits arising to their account during the period concerned. Related information is provided below.

Georgia

9. The Government of Georgia indicated to the Committee on Contributions, at the special session of the Committee in 1999, that it intended to submit a schedule of future payments. It did so in 2000 at the sixtieth session of the Committee. At the sixty-first session of the Committee, in 2001, the Government of Georgia submitted a revised schedule. Under cover of his letter of 4 May 2002 to the President of the General Assembly, the Minister for Foreign Affairs of Georgia submitted another revision of the schedule and, in his letter dated 17 May 2003 to the President, the Minister submitted a further revision of the schedule. Those submissions are summarized below:

	Schedule proposed in			
	2000	*2001*	*2002*	*2003*
	(US dollars)			
2000	180 000			
2001	707 104	801 300		
2002	707 104	711 549*	671 818	
2003	707 104	711 549*	1 260 272*	
2004	1 060 656	1 067 324*	1 260 272*	776 229
2005	1 060 656	1 067 324*	1 260 272*	776 229
2006	1 414 208	1 423 094*	1 260 272*	776 229
2007	1 414 208	1 423 094*	1 260 272*	776 229
2008				776 229
2009				776 229
2010				776 229
2011				776 229
2012				776 229
2013				776 229

* Plus contributions for the current year.

10. If fully implemented, the most recent schedule proposed by the Government of Georgia would involve payments totalling $7,726,290. It would reduce Georgia's outstanding assessed contributions at the end of 2013 to its total assessments for the period 2004-2013 minus $660,126.

Niger

11. In a note verbale dated 22 March 2004 to the Secretariat, the Permanent Mission of Niger to the United Nations submitted a proposed schedule for the payment of its assessed contributions. The schedule is summarized below:

	Payment (US dollars)
2004	18 000
2005	40 000
2006	45 000
2007	50 000
2008	70 000
2009	98 000
2010	98 000
2011	98 000
2012	30 000

12. If fully implemented, this schedule would involve payments totalling $547,000 over the period 2004-2012. If that amount is received during 2004-2012, it would reduce the Government's outstanding assessed contributions at the end of 2012 to the total of its assessments during 2004-2012 minus $143,035.

Republic of Moldova

13. At the special session of the Committee on Contributions in 1996, the Government of the Republic of Moldova indicated its intention to pay its arrears of assessed contributions to the United Nations over a period of seven years. The Government indicated revised schedules of payments at the fifty-ninth and sixty-first sessions of the Committee, in 1999 and 2001, respectively, which are summarized below:

	Schedule proposed in:		
	1996	*1999*	*2001*
	(US dollars)		
1996	1 000 000		
1997	1-1.2 million		
1998	1-1.2 million		
1999	1-1.2 million		
2000	1-1.2 million	500 000	
2001	1-1.2 million	558 947	180 000
2002	1-1.2 million	700 000	500 000
2003		700 000	800 000
2004		700 000	820 000
2005			1 000 000

14. If fully implemented, the most recent schedule proposed by the Government of the Republic of Moldova would involve payments totalling $3.3 million over the period 2001-2005. If that amount is received during 2001-2005, it would reduce the Government's outstanding assessed contributions at the end of 2005 to its total assessments during the period 2004-2005 plus $63,502.

Sao Tome and Principe

15. Under cover of his letter of 17 May 2002 to the President of the General Assembly, the Chargé d'affaires a.i. of Sao Tome and Principe to the United Nations submitted the following calendar of future payments:

	Payment (US dollars)
2002	27 237
2003	42 237
2004	59 237
2005	74 237
2006	89 237
2007	114 237
2008	134 237
2009	153 752

16. If fully implemented, the schedule proposed by the Government of Sao Tome and Principe would involve payments totalling $693,896. If that amount is received during the period 2002-2009, it would reduce the Government's outstanding assessed contributions at the end of 2009 to its total assessments during 2004-2009 minus $62,674.

Tajikistan

17. In his letter of 15 September 2000 to the President of the General Assembly, the Prime Minister of Tajikistan indicated that his Government had paid $65,250.76 that year and proposed a plan for the phased reduction of its arrears, which is summarized below:

	Payment (US dollars)
2000	65 251
2001	67 822
2002	67 822
2003	67 822
2004	67 822
2005	67 822
2006	203 466
2007	203 466
2008	203 467
2009	203 467
2010	203 467

18. If fully implemented, the schedule proposed by the Government of Tajikistan would involve payments totalling $1,421,694. If that amount is received during the period 2000-2010, it would reduce the Government's outstanding assessed contributions at the end of 2010 to $1,171,421 plus its total assessments during the period 2004-2010.

Other Member States

19. As indicated in the report of the Committee on Contributions on its sixty-third session,[3] the Central African Republic indicated, in its representation concerning the application of Article 19 of the Charter, that it planned to submit at a later date a schedule for the payment of its contributions in arrears. The schedule had not been received at the time that the present report was prepared.

20. Otherwise, no other Member States have so far submitted payment plans or schedules for the elimination of their arrears, except for the Niger. While it is not possible to predict which Member States may choose to submit multi-year payment plans in future, it is reasonable to assume that Member States may be more likely to avail themselves of that option if their outstanding assessed contributions are high in relation to the current level of their assessed contributions. The table below shows the distribution of Member States' unpaid assessed contributions at 31 December 2003 in relation to the level of their assessed contributions for 2003.

Outstanding assessed contributions at 31 December 2003 were the following proportion of 2003 assessments	*Number of Member States*	*Total amount outstanding at 31 December 2003 (US dollars)*
No outstanding assessed contributions	21	-
Less than 100%	104	1 138 511 037
100-199%	29	134 547 138
200-299%	22	25 589 636
300-399%	1	73 649 028
400-499%	-	-
More than 499%	14*	230 588 164

* Including the five Member States that have submitted payment plans.

III. Status of Member States' payment plans at 31 December 2003

21. The status of implementation of the most recent payment plans submitted by Georgia, the Niger, the Republic of Moldova, Sao Tome and Principe and Tajikistan at 31 December 2003 is summarized below.

Status of payment plans at 31 December 2003

(United States dollars)

	Georgia				*Niger*			
	Most recent plan	*Assessments at 31 December*	*Payments/ credits*	*Outstanding at 31 December*	*Payment plan*	*Assessments at 31 December*	*Payments/ credits*	*Outstanding at 31 December*
1999				7 205 324				334 149
2000		116 120	184 443	7 188 001		27 082	95	361 136
2001		87 686	302 218	6 973 469		14 483	318	375 301
2002		114 552	70 298	7 019 723		15 723	3 233	387 791
2003		97 200	14 759	7 102 164		17 124	950	403 965
2004	776 229				18 000			
2005	776 229				40 000			
2006	776 229				45 000			
2007	776 229				50 000			
2008	776 229				70 000			
2009	776 229				98 000			
2010	776 229				98 000			
2011	776 229				98 000			
2012	776 229				30 000			
2013	776 229							

	Republic of Moldova				*Sao Tome and Principe*			
	Payment plan	*Assessments at 31 December*	*Payments/ credits*	*Outstanding at 31 December*	*Payment plan*	*Assessments at 31 December*	*Payments/ credits*	*Outstanding at 31 December*
1999				3 386 720				570 783
2000		161 436	324 618	3 256 538		13 543	48	584 278
2001	180 000	38 395	163 254	3 131 810		14 254	157	598 375
2002	500 000	56 202	516 732	2 679 236	27 237	15 723	29 146	584 952
2003	800 000	38 883	826 675	1 856 841	42 237	17 124	929	601 147
2004	820 000				59 237			
2005	1 000 000				74 237			
2006					89 237			
2007					114 237			
2008					134 237			
2009					153 752			
2010								
2011								
2012								
2013								

	Tajikistan			
	Payment plan	*Assessments at 31 December*	*Payments/ credits*	*Outstanding at 31 December*
1999				2 436 208
2000	65 251	63 507	205 389	2 294 326
2001	67 822	18 727	296 251	2 046 802
2002	67 822	22 205	306 961	1 765 046
2003	67 822	19 439	296 657	1 487 857
2004	67 822			
2005	67 822			
2006	203 466			
2007	203 466			
2008	203 467			
2009	203 467			
2010	203 467			
2011				
2012				
2013				

22. As indicated in the table, the Government of Tajikistan has significantly exceeded the payments/credits for the period 2000-2003 foreseen in its schedule. Payments/credits totalling $1,105,258 were applied during the period, compared to anticipated payments totalling $268,717 for those years in its schedule. As a result, should the Government of Tajikistan make the payments currently indicated in its schedule for the period 2004-2010 (a total of $1,152,977), its outstanding assessed contributions at the end of 2010 would amount to $334,880 plus the amount of its assessments during the period 2004-2010.

23. Payments/credits from the Republic of Moldova during the period 2001-2003 ($1,506,661) exceeded somewhat payments foreseen in its schedule for the same period ($1,480,000). As a result, should the Government of the Republic of Moldova make the payments currently indicated in its schedule for the period 2004-2005 (a total of $1,820,000), its outstanding assessed contributions at the end of 2005 would amount to $36,841 plus the amount of its assessments during the period 2004-2005.

24. Payments by the Government of Sao Tome and Principe foreseen during the period 2002-2003 in its payments schedule ($69,474) exceeded the amounts actually received/applied in those years ($30,075). As a result, should the Government of Sao Tome and Principe make the payments currently indicated in its schedule for the period 2004-2009 ($624,442), its outstanding assessed contributions at the end of 2009 would amount to its assessments during the period 2004-2009 minus $23,295.

25. The schedule submitted by the Niger and the most recent revision of Georgia's payment plan only begin in 2004.

IV. Conclusions and recommendations

26. **The General Assembly may wish to take note of the present report and encourage Member States with significant arrears of contributions to consider submitting a multi-year payment plan.**

Notes

[1] See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 11* (A/57/11), chap. iV.A.

[2] Ibid., *Fifty-eighth Session, Supplement No. 11* (A/58/11), para. 52.

[3] Ibid., chap. V.2.